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No. 2957

United States Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a bankrupt,

Appellee.

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States, et al.,

Appellants.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed
MAR 23 1917
F. D. Monckton,
Clerk.

Parker & Stone Co., Law Printers, 238 New High St., Los Angeles, Cal.


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No.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD

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Page

Answer to Bill of Complaint in Case No. B 94.... 39
Answer to Amendment to Bill of Equity and to Bill as Thus Amended in Case No. B 94..... 87
Amended Bill in Equity in Case No. B 94..... 90
Answer in Case No. A 32..... 120
Assignment of Errors in Case No. B 94..... 258
Assignment of Errors in Case No. A 32..... 261
Bill of Complaint in Case No. B 94..... 3
Bill of Complaint in Case No. A 32..... 102
Bannister's Schedule in Bankruptcy..... 156
Citation on Appeal in Case No. B 94..... 2
Citation on Appeal in Case No. A 32..... 101
Decree in Equity in Case No. B 94..... 97
Decree in Equity in Case No. A 32..... 123

EXHIBITS:

Plaintiff's 1—Form of Bill Head of A. W. Bannister Used During Year 1915..... 128
Plaintiff's 2—Letter, April 10, 1915, Bannister to D. Hanson..... 144

Index.

Page

Plaintiff's 3—Letter, April 6, 1915, Bannister to G. J. Syminton..... 145

Plaintiff's 4—"Blanket" Mortgage, April 23, 1915 151

Plaintiff's 10—Date of Checks Signed by Bannister in Favor of Defendant Bank..... 171

Plaintiff's 12—Deposit Book Showing Deposits Between April 23 and June 18, 1915 203

Plaintiff's 13—Book Containing Shipping Receipts Issued by Santa Fe R. R. for Shipments During 1915 from Bannister's Warehouse 207

Plaintiff's 14, 15, 16—Checks Signed by Bannister 221

EXHIBITS in Bill of Complaint in Case No. B 94:

Complainant's A—Mortgage of Jan. 12, 1915 19

Complainant's B—Mortgage of Jan. 12, 1915 26

Complainant's C—Mortgage of Dec. 21, 1914 29

Complainant's D—Mortgage of Jan. 5, 1915 32

EXHIBITS in Answer in Case No. B 94:

Defendant's A—Mortgage of Nov. 11, 1914.. 58

Defendant's B—Mortgage of Dec. 1, 1914.. 61

Defendant's C—Mortgage of Dec. 9, 1914.. 64

Defendant's D—Mortgage of Dec. 21, 1914.. 67

Defendant's E—Mortgage of Jan. 4, 1915.. 70

Defendant's F—Mortgage of Jan. 5, 1915.. 73

Defendant's G—Mortgage of Jan. 12, 1915.. 76

Defendant's H—Mortgage of Jan. 12, 1915.. 79

Index.

Page

EXHIBIT in Bill of Complaint in Case No. A 32:
Complainant's A—Deed of Trust of Apr. 8, 1915 109
Ledger Account of Defendant Bank as Shown in Bannister's Ledger 175
Names and Addresses of Attorneys 1
Order in Case No. B 94 Amending Bill 93
Order in Case No. B 94 Denying Motion to Dismiss Bill 96
Opinion of Court 125
Petition for Appeal and Allowance Thereof in Case No. B 94 255
Petition for Appeal and Allowance Thereof in Case No. A 32 257
Praecipe to the Clerk 269

TESTIMONY on Behalf of Plaintiff:

BANNISTER, ALFRED W. 127
Additional—Direct-Examination 169
Cross-Examination 168
Resumed—Cross-Examination 178
Redirect Examination 202
Recross Examination 218
Redirect Examination 219

WELLS, W. C. 230
Cross-Examination 230

MYER, MINNIE 231
Cross-Examination 231

PRICE, JAMES E. 232
Cross-Examination 233

Index. Page

RUSSELL, J. K. 233
Recalled 234
Cross-Examination 244
Redirect Examination 249
Recross-Examination 250
Subpoena in Case No. B 94 36
Subpoena in Case No. A 32 118
Statement of Evidence 127
Supersedeas Bond in Case No. B 94 263
Supersedeas Bond in Case No. A 32 266
Stipulation Respecting Joint Transcript and Costs on Appeal 272
Stipulation Extending Time 273

Names and Addresses of Attorneys.

For Complainant and Appellee:

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For Defendants and Appellants:

G. HAROLD JANEWAY, Esq., 1132 Title Insurance Building, Los Angeles, California;

HUNSAKER & BRITT, 1132 Title Insurance Building, Los Angeles, California.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

In Equity. No. B 94.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,

Defendant.

Citation on Appeal.

United States of America,—ss.

To WILLIAM H. MOORE, JR., Trustee of the Estate of Alfred W. Bannister, a Bankrupt, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court for the Southern District of California, Southern Division, and filed in the clerk's office of said court on the 16th day of January, 1917, in a cause wherein National Bank of Bakersfield, a corporation, is appellant and you are respondent, to show cause, if any, why the decree rendered against said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. OSCAR A. TRIPPET, Judge

of the United States District Court for the Southern District of California, Southern Division, this 16th day of January, 1917.

OSCAR A. TRIPPET,
District Judge.

Service of a copy of the within citation is hereby admitted, this 16th day of January, 1917.

LUCIUS K. CHASE,
E. U. SCHROETER,
Attorneys for Respondent.

[Endorsed]: No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Citation on Appeal. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendant.

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No..... In Equity.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,
Defendant.

Bill of Complaint.

To the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division; in Chancery Sitting:

William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, a citizen of the State of California, residing in Los Angeles County in said state, brings this his Bill of Complaint against National Bank of Bakersfield, a banking corporation organized and existing under and by virtue of the laws of the United States, a citizen of the State of California, with its principal place of business in the City of Bakersfield, in Kern County in said state.

And therefore complainant complains and says:

That on the 5th day of May, A. D. 1915, W. C. Wells, Security National Bank of Los Angeles, a corporation, William H. Mead, and National Bank of Pasadena, a corporation, as petitioning creditors filed in the District Court of the United States, in and for the Southern District of California, Southern Division, an involuntary petition in bankruptcy against Alfred W. Bannister, a citizen of the State of California and residing in the City of Los Angeles in Los Angeles County, in said state, praying that the said Alfred W. Bannister be adjudged a bankrupt and that service of said petition, with a subpoena, be made upon him; that thereupon, upon the same day, a subpoena duly issued out of and under the seal of said Court directed to the said Bannister, commanding him to appear and answer the said petition on the 17th day of May, 1915; that thereafter, to-wit, on the 12th day of May, 1915, the

said subpoena with a copy of the said petition was duly served upon the said Bannister at the City of Bakersfield, Kern County, California, and on the 24th day of May, 1915, the said Bannister was, by the aforesaid Court, declared and adjudged a bankrupt.

That thereafter, to-wit: on the 22nd day of June, 1915, at the first meeting of the creditors of said bankrupt, regularly called for such purpose, your complainant herein was duly elected Trustee of said bankrupt estate, and qualified as such Trustee on the same day, and has, at all times since said 22nd day of June, 1915, been, and is now, Trustee of said bankrupt estate acting in the proper and full discharge of his duties of such Trustee.

Your complainant further says that the said bankrupt, Alfred W. Bannister, was, at the time of the filing of the petition hereinbefore mentioned, and for a long time prior thereto, a merchant engaged in the hay and grain business on a large scale in the City of Bakersfield, Kern County, in the State of California, and in the conduct of said business was on the 12th day of January, 1915, and until his adjudication in bankruptcy the owner and in possession of two large warehouses in said City of Bakersfield, one of which is located at 14th and D streets, adjacent to the right-of-way of the Atchison, Topeka and Santa Fe Railway Company, and the other at what is known as "Wible Orchard Siding," adjacent to the right-of-way of the Southern Pacific Company; that on or about the 12th day of January, 1915, the said bankrupt, Alfred W. Bannister, was the owner and in possession of a large stock in trade, then on hand at said warehouses, con-

sisting of corn, barley, oats, wheat, bale ties, alfalfa and other grain; that the following part of said stock in trade was, on or about said 12th day of January, 1915, in said Bannister's warehouse at 14th and D streets, in said City of Bakersfield, California, to-wit:

White Egypt Corn	3345 sacks	410,000 lbs
" " "	768 "	96,000 "
Feterita	315 "	37,800 "
R. Barley	750 "	57,750 "
Barley	145 "	14,500 "
Oats	385 "	30,800 "
Shelled corn	95 "	10,000 "
Wheat	74 "	10,360 "
Bale Ties	975 Bales	
Alfalfa	1877 "	236,150 "
Grain Hay	1134 "	140,600 "
Ear corn in crib		142,200 "

And that the following part of said stock in trade was, on or about said 12th day of January, 1915, in said Bannister's warehouse, "Wible Orchard Siding," in the City of Bakersfield, California, to-wit:

Red Egypt corn	1060 sacks	126,700 lbs
Barley Hay	445 "	52,000 "
Grain Hay	200 tons	400,000 "

That your complainant is informed and believes, and upon such information and belief charges the fact to be, that all of the aforesaid particularly described stock in trade so remained in the warehouses as aforesaid, and in the actual possession, control and custody of the said bankrupt, Alfred W. Bannister, from and after said 12th day of January, 1915, until sold and delivered, as hereinafter set out, to purchasers thereof on

various dates between the 9th day of February, 1915, and the 25th day of June, 1915.

That on said 12th day of January, 1915, said bankrupt, Alfred W. Bannister, executed to the defendant herein, National Bank of Bakersfield, two certain instruments in writing purporting to be chattel mortgages covering all of the above described stock in trade of the said Bannister in said warehouses, and given to secure certain alleged promissory notes of the said Bannister to the said National Bank of Bakersfield, as follows:

One dated November 11, 1914, for twenty-five hundred dollars ($2500.00); one dated December 1, 1914, for one thousand dollars ($1,000.00); one dated December 9, 1914, for $1500.00; one dated December 21, 1914, for fifteen hundred dollars ($1500.00); one dated January 4, 1915, for fifteen hundred dollars ($1500.00); one dated January 5, 1915, for one thousand dollars ($1,000), and one dated January 12, 1915, for fifteen hundred dollars ($1500.00); copies of said purported chattel mortgages marked "Exhibit A" and "Exhibit B" respectively, are hereto to this bill of complaint attached and made a part hereof.

Your complainant further says that the said purported chattel mortgages "Exhibit A" and "Exhibit B" at the time of their execution were not recorded or registered in the office of the County Recorder of Kern County, wherein the above mentioned stock in trade was located, or anywhere else, nor were they so recorded or registered until on or about the 23rd day of April, 1915; that under the laws of the State of California, said purported chattel mortgages were

prior to said 23rd day of April, 1915, and now are null and void and of no effect as a lien upon said stock and trade so far as creditors of said bankrupt, Alfred W. Bannister, were concerned, and that said laws provide that chattel mortgages are void as against creditors unless recorded in the office of the County Recorder of the county where the property mortgaged is situated. Your complainant further says that the said purported chattel mortgages are null and void and of no effect whatever under and by virtue of the provisions of Section 2955 of the Civil Code of the State of California, which provides that a valid chattel mortgage cannot be made upon the stock in trade of a merchant.

Your complainant further says that at the time of the execution of said purported chattel mortgages, to-wit, January 12, 1915, and also that at the time of the recordation of same, to-wit: April 23, 1915, the said Bannister was insolvent; that said purported mortgages ~~was~~ were both executed and recorded, within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at the time of the said execution of said purported chattel mortgages and also at the time of the said recordation thereof, the said National Bank of Bakersfield had reasonable cause to believe that said mortgages and the enforcement of the lien of said mortgages would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of said purported chattel mortgages, or the recognition thereof as having created valid liens on the property described therein will enable the defendant, National Bank of

Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further says that he is informed and believes and upon such information and belief charges the fact to be, that said defendant National Bank of Bakersfield pretends to hold certain alleged warehouse receipts covering the above described stock in trade and given to it by said bankrupt Alfred W. Bannister as a further and additional security for the aforesaid promissory notes, and by way of pledge of the said stock in trade, but your complainant shows that at the time of receiving the said warehouse receipts from the said Bannister, to-wit, on or subsequent to January 12, 1915, the said National Bank of Bakersfield had reasonable cause to believe that any transfer of title to said property to it, from the said Bannister, as security for or in payment of any debt or obligation of said Bannister, to it, would effect a preference in its favor over the other creditors of said bankrupt in the same class; and that the enforcement of such transfer will enable the defendant, National Bank of Bakersfield, as a creditor of said bankrupt to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class; that at the date of the delivery of said warehouse receipts to said defendant, the said Alfred W. Bannister was insolvent and such delivery of said warehouse receipts was made within four months of the filing of the aforesaid involuntary petition in bankruptcy against the said Alfred W. Bannister.

Your complainant further says that the alleged warehouse receipts were given by the said bankrupt, Alfred W. Bannister, to the said defendant, National Bank of Bakersfield, without any change of possession whatsoever of the aforesaid stock in trade and without any intent whatsoever of changing such possession; and that they were given with intent to defraud creditors of said bankrupt, Alfred W. Bannister; and that the said Bannister was not a warehouseman, nor was he pursuing the calling of a warehouseman in receiving and storing hay, grain or other personal property as a business for profit; and that for each and all the foregoing reasons said warehouse receipts were and are null and void.

Your complainant further says that on various dates between the 9th day of February, 1915, and the 25th day of June, 1915, the said bankrupt, Alfred W. Bannister, acting in conjunction with, and, as your complainant is informed and believes and upon such information and belief charges the fact to be, under the advice and direction of the defendant, National Bank of Bakersfield, sold and delivered to various purchasers for cash all of the above mentioned stock in trade, then and there being in the said warehouses of said Bannister at Bakersfield, California, the proceeds of which the said Bannister paid, or turned over to said defendant, and the said defendant received the same and credited the same in favor of said Bannister, upon the indebtedness evidenced by the aforesaid promissory notes; that the exact dates of sale, and the exact amounts realized, are to your complainant unknown; that all times between said 9th day of February, 1915, and said

25th day of June, 1915, the said bankrupt, Alfred W. Bannister, was insolvent, and at all such times the said defendant, National Bank of Bakersfield, had reasonable cause to believe that said payments of money, so received by it from or on account of the said bankrupt, Alfred W. Bannister, if permitted to stand as valid payments on account of said indebtedness of said Bannister, would effect a preference in its favor over the other creditors of said bankrupt in the same class; that if said payments of moneys so received by said National Bank of Bakersfield, from or on account of said bankrupt, are permitted to be and remain the property of said National Bank of Bakersfield, and not turned over to your complainant as Trustee of said bankrupt estate for the benefit of all the creditors thereof, it will enable the said defendant, as a creditor of said bankrupt, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class; that all of said payments, herein in this paragraph mentioned, were made to and received by said defendant National Bank of Bakersfield within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister.

Your complainant further says that on various dates between the 4th day of January, 1915, and the date of the filing of this bill of complaint, the said bankrupt, Alfred W. Bannister, paid to the said defendant, National Bank of Bakersfield, and the said National Bank of Bakersfield received of and from the said Bannister, divers sums of money, the exact amounts of which, or dates of payment of same, being to your complainant

unknown, for and on account of certain alleged loans of money theretofore made and evidenced by certain of the alleged promissory notes mentioned and set out in "Exhibits A, B, C and D" attached hereto; that at the times of each and all of said payments, the said bankrupt, Alfred W. Bannister, was insolvent; that each and all of said payments were made within four months prior to the filing of the aforesaid involuntary petition in bankruptcy against the said Alfred W. Bannister; that at time of each and all of the said payments to it, the said defendant, National Bank of Bakersfield, have reasonable cause to believe that the payments so made to it would effect a preference in its favor over the other creditors of said bankrupt in the same class; and that the retention of all or any part of the said moneys so paid and the appropriation of the same to its own use, by the said National Bank of Bakersfield, will enable the said defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further says that the aforesaid warehouse located at "Wible Orchard" in said City of Bakersfield, California, consists of a corrugated iron and frame building; that your complainant is informed and believes and upon such information and belief charges the fact to be, that the said building is located upon real property belonging to the Southern Pacific Company, a railroad corporation, at said City of Bakersfield, California, but that the said warehouse building is personal property of said bankrupt's estate

and that complainant has the right to remove the same either now or at some time in the future; that on the 21st day of December, 1914, said bankrupt, Alfred W. Bannister, was the owner and in possession of said warehouse building at "Wible Orchard Siding," and so continued in possession and control of the same down to and including the election and qualification of your complainant as Trustee in Bankruptcy of his estate; that on the 21st day of December, 1914, the said bankrupt, Alfred W. Bannister, executed and delivered to the defendant herein, an instrument in writing purporting to be a chattel mortgage covering aforesaid "Wible Orchard Warehouse" and given to said defendant to secure an alleged promissory note of the same date for fifteen hundred dollars ($1500.00) and signed by the bankrupt, Alfred W. Bannister, a copy of which purported chattel mortgage, marked "Exhibit C," is hereto annexed and made a part hereof.

Your complainant further says that said purported chattel mortgage on said Wible Orchard Warehouse was not recorded or registered in the office of the County Recorder of Kern County, California, wherein said property is located, nor anywhere else, prior to the 23rd day of April, 1915; that at the time of the execution and delivery of said purported chattel mortgage, and also at the date of the recordation thereof, the said bankrupt, Alfred W. Bannister, was insolvent; that said purported mortgage was recorded within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at the time of the recordation thereof, the said National Bank of Bakersfield had

reasonable cause to believe that the enforcement of the lien of said purported chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of the said purported chattel mortgage, if held to be valid, will enable the defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further states that on the 5th day of January, 1915, the said bankrupt Alfred W. Bannister was the owner of and in possession of one four-passenger, ~~controvertible~~ convertible six, Stutz automobile, 1913 model, series 4 B, car No. 1006, registered No. 27987, located at the said warehouse of the said bankrupt at 14th and D streets in the City of Bakersfield, California; that said Bannister so continued in possession and control of said automobile down to the date of the election and qualification of your complainant as Trustee of his estate in bankruptcy; that on said 5th day of January, 1915, said bankrupt executed and delivered to the defendant herein, an instrument in writing purporting to be a chattel mortgage covering said automobile, and given to secure two alleged promissory notes, one for fifteen hundred dollars ($1500.00), dated January 4, 1915, and the other for one thousand dollars ($1,000.00), dated January 5, 1915, both alleged notes purporting to have been executed by the said bankrupt, Alfred W. Bannister, a copy of said purported chattel mortgage, marked "Exhibit D," is hereto annexed and made a part hereof.

Your complainant further says that said purported chattel mortgage on said automobile was not recorded or registered in the office of the County Recorder of Kern County, California, wherein said property is located, nor anywhere else, prior to the 23rd day of April, 1915; that at the time of the execution and delivery of said purported chattel mortgage and also at the date of the recordation thereof, the said bankrupt Alfred W. Bannister was insolvent; that said purported chattel mortgage was executed and delivered and also recorded within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at time of the execution and delivery thereof, and also at the time of the recordation thereof, the said National Bank of Bakersfield had reasonable cause to believe that the enforcement of the lien of said purported chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of the said purported chattel mortgage if held to be valid, will enable the defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant says that he is informed and believes and upon such information and belief charges the fact to be that all of the said purported chattel mortgages, hereinbefore mentioned, were not recorded prior to the 23rd day of April, 1915, by reason and in pursuance of a secret agreement between the said

bankrupt, Alfred W. Bannister, and the defendant National Bank of Bakersfield, to keep said documents from record in order that the said Bannister's financial credit in his said business as a hay and grain merchant might not be impaired or destroyed, and with the intent to prevent action being taken by the then creditors of said Bannister to collect their accounts against him; and complainant further says that by virtue of the said secret agreement between said Bannister and National Bank of Bakersfield, said Bannister was given a false credit and financial standing, whereby and by virtue of which all of his said creditors, save this defendant, National Bank of Bakersfield, were induced either to extend credit to the said Bannister for merchandise purchased by him between said 12th day of January, 1915, and said 23rd day of April, 1915, or to forebear to take action to collect their accounts against him.

Your complainant further says that unless the relief herein prayed for be granted to him by Your Honors, that the assets of the said estate of Alfred W. Bannister will be materially reduced by a large amount, and that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims, free of all liens and incumbrances, the said property hereinabove mentioned, and also the said moneys so wrongfully and unlawfully received and appropriated by the defendant herein to its own use and benefit.

To the end, therefore, that your complainant may obtain relief in the premises in this Honorable Court,

where alone adequate relief can be afforded, he prays:

1. That the said defendant, National Bank of Bakersfield, be compelled to make full, true, direct and perfect answer to each and every allegation of this bill of complaint according to the best of its knowledge, remembrance, information and belief, but not on oath, answer on oath being expressly waived;

2. That it be adjudged and decreed that all of the hereinabove mentioned chattel mortgages, executed by the said bankrupt Alfred W. Bannister to the said National Bank of Bakersfield, and dated respectively, December 21, 1914, January 5, 1915, January 12, 1915, and January 12, 1915, are null and void and of no effect and that they do not, nor does any one of them, constitute any lien or encumbrance whatsoever upon all or any part of the respective personal property in the said chattel mortgages mentioned; and that they be ordered delivered up to this Honorable Court for cancellation; and that they be cancelled.

3. That the said defendant may be decreed to render to this Court a full, true and perfect account of all moneys whatsoever received by it from or on account of the said bankrupt, Alfred W. Bannister, between the 4th day of January, 1915, and the date of the filing of this bill of complaint; that said defendant be adjudged and decreed to pay to this complainant all of the said moneys so received by it from the said Alfred W. Bannister during said period between the 4th day of January, 1915, and the date of the filing of this bill of complaint.

4. That a reference be made to a special master of

this Court to take such accounting, and report the evidence and his conclusions thereon to this Court.

5. That your complainant may have such other or further relief as equity may require.

6. May it please Your Honors to grant your complainant a Writ of Subpoena, directed to the defendant, National Bank of Bakersfield, and commanding it at a certain time, under a certain penalty, to appear before Your Honors, in this Court, then and there to answer unto this bill of complaint, and to abide by and perform such decree as the Court may make in the premises.

WM. H. MOORE, JR.,

As Trustee of the Estate of Alfred W. Bannister, Bankrupt.

ERNEST U. SCHROETER,

LUCIUS K. CHASE,

Attorneys for Complainant.

State of California,

Los Angeles County,—ss.

William H. Moore, Jr., the Complainant in the foregoing bill named, being duly sworn, says that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes them to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 12th day of July, 1915.

[Seal] M. LUCILE ADAMS,

Notary Public in and for the County of Los Angeles, State of California.

EXHIBIT "A."

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit: the Bannister Warehouse, corner of 14th & D Sts., Santa Fe Yards, Bakersfield, California.

White Egypt Corn	3345 Sacks	410,000″	$30.00	$6,000.00
" " "	768 "	96,000″	26.00	1,248.00
Feterita	315 "	37,800″	26.00	491.40
R. Barley	750 "	57,750″	28.00	808.50
Barley	145 "	14,500″	26.00	188.50
Oats	385 "	30,800″	28.00	431.20
Shelled Corn	95 "	10,000″	30.00	150.00
Wheat	74 "	10,360″	30.00	155.40
Bale Ties	975 Bales		1.15	1,120.00
Alfalfa	1877 "	236,150″	7.00	826.50
Grain Hay	1134 "	140,600″	8.00	562.40
Ear Corn in Crib		142,200″	22.00	1,562.00
	Wible Warehouse			
Red Egypt Corn	1060	126,700	26.00	1,647.10
Barley Hay	445	52,000	8.00	208.00
		Total		$15,399.00

Copy

No.....

As security for the payment to the said mortgagee of 7 promissory notes in the words and figures following, to-wit:

$2500.00 Bakersfield, California, Nov. 11th, 1914.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Twenty-five hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bearing like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case an action is commenced on this note, I agree to pay a reasonable attorney's fee thereon.

Signed A. W. BANNISTER.

Address.....

50c stamps cancelled

No.....

$1000.00 Bakersfield, California, Dec. 1st 1914

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of One thousand and no/100 Dollars, with interest thereon at the rate of eight per cent per

annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

Signed A. W. BANNISTER.

Address.....

Stamps 20c cancelled

Copy

No.....

$1500.00 Bakersfield, California, Dec. 9th, 1914.

Thirty Days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

$1500.00 Bakersfield, California, Dec. 21st, 1914.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

Copy

$1500.00 Bakersfield, California, Jany. 4th, 1915.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per

annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

No.....

$1000.00 Bakersfield, California, Jan. 5th, 1915.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of One thousand and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 20c

No. 888

$1500.00 Bakersfield, California, Jan. 12, 1915.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER.

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

[Seal] C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says that said mortgage is made on good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal) C. H. FRANEY,
Notary Public in and for said County and State

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says that he is an officer of The National Bank of Bakersfield, the mortgage.. named in the foregoing mortgage, to-wit, the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee. That the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal) C. H. FRANEY,

Notary Public in and for said County and State.

Filed for record at the request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., and recorded in Vol. 29 of Chat. Mtgs., page 267, Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

EXHIBIT "B."

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation merchant mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

Two hundred tons of grain hay located at Bannister's Warehouse, Wible Siding, Kern County, California, as security for the payment to the said mortgagee

of a promissory note, in the words and figures following, to-wit:

No.....

$1500.00 Bakersfield, California, Jan. 12th, 1915.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Stamps cancelled 30c

It Is Also Agreed that if the said mortgagor should fail to make any payment in said promissory note provided, then said mortgagee shall have the right to immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal) C. H. FRANEY,
Notary Public in and for said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit,

the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal) C. H. FRANEY,

Notary Public in and for said County and State.

Recorded April 23, 1915, in Book 29 of Chattel Mortgages, page 263, records of Kern County, California.

EXHIBIT "C."

THIS MORTGAGE, made the 21st day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation merchant mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

On a corrugated Iron & Frame Warehouse Building located in Southern Pacific Company's Land Siding at Wible Orchard Siding, Kern County, California, as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

No.....

$1500.00 Bakersfield, California, December 21st, 1914.

Ninety days after date, for value received, I promise

to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Stamps cancelled 30c.

It Is Also Agreed that if said mortgagor shall fail to make any payment in said promissory note provided, the said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 21st day of December, in the year one thousand nine hundred and fourteen, before me, C. H.

Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

State of California,

County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 21st day of December, 1914.

(Seal) C. H. FRANEY,

Notary Public in and for the said County and State.

State of California,

County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any

design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 21st day of December, 1914.

(Seal) C. H. FRANEY,

Notary Public in and for the said County and State.

Filed for record at the request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., and recorded in Vol. 29 of Chat. Mtgs., page 265, Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

EXHIBIT "D."

THIS MORTGAGE, made the 5th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

One four passenger convertible Six Stutz 1913 model, Series 4B, Car No. 1006, Register No. 27987, located on property of A. W. Bannister known as Bannister's Warehouse Fourteenth and D streets, as security for the payment to the said mortgagee of 2 promissory notes, in the words and figures following, to-wit:

$1500.00 Bakersfield, California, Jan. 4th, 1915.

Sixty days after date, for value received, I promise

to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Cancelled stamps 30c

No.....

$1000.00 Bakersfield, California, Jan. 5th, 1915.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any part not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Cancelled stamps 20c

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 5th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 5th day of January, 1915.

(Seal) C. H. FRANEY,

Notary Public in and for said County and State.

State of California,

County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 5th day of January, 1915.

(Seal) C. H. FRANEY,

Notary Public in and for said County and State.

Filed for record at request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., and recorded in Vol. 29 of Chat. Mtgs., page 272, Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

[Endorsed]: No. B 94 Eq. Dept. In the District Court of the United States of America, in and for the Southern District of California, Southern Division. William H. Moore, Jr., as trustee of the estate of Alfred W. Bannister, a bankrupt, Complainant, vs. National Bank of Bakersfield, a corporation organized and existing under and by virtue of the laws of the U. S., Defendants. No. In Equity. Bill of Complaint. Filed Jul. 13, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Lucius K. Chase, E. U. Schroetter, Attorneys for Complainant. 441-443 Title Insurance Building, Los Angeles, California.

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

Subpoena.

In Equity.

The President of the United States of America, Greeting: To National Bank of Bakersfield, a Corporation.

You Are Hereby Commanded, That you be and appear in said District Court of the United States aforesaid, at the court room in Los Angeles, California, on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Bill of Complaint exhibited against you in said Court by William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, who is a citizen of the State of California, and to do and receive

what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, The Honorable OSCAR A. TRIPPET, Judge of the District Court of the United States, this 13th day of July, in the year of our Lord one thousand nine hundred and fifteen and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE, Clerk.
By R. S. Zimmerman, Deputy Clerk.

Memorandum Pursuant to Rule 12, of Rules of Practice for the Courts of Equity of the United States, Promulgated by the Supreme Court, November 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's office; otherwise the Bill may be taken *pro confesso.*

WM. M. VAN DYKE, Clerk.
By R. S. Zimmerman, Deputy Clerk.

United States Marshal's Office,
Southern District of California,—ss.

I Hereby Certify, that I received the within writ on the 15th day of July, 1915, and personally served the same on the 16th day of July, 1915, on National Bank of Bakersfield, a Corporation, by delivering to and leaving with C. L. Chaflin, President of The National Bank of Bakersfield, a corporation, said defendant named

therein, personally, at the County of Kern, City of Bakersfield, in said district, a copy thereof.

Fresno, July 16th, 1915.

C. T. WALTON,
U. S. Marshal.
By S. J. Shannon,
Deputy.

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's office twenty days from the issuing thereof.

Subpoena issued July 13th, 1915.

WM. M. VAN DYKE, Clerk.
By R. S. Zimmerman, Deputy Clerk.

Received Jul. 13, 1915, m., in U. S. Marshal's office, Los Angeles, Cal.

[Endorsed]: Marshal's Civil Docket No. 2718. No. B 94 Equity. U. S. District Court, Southern District of California, Southern Division. In Equity. William H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield, a Corporation. Subpoena. Filed Jul. 23, 1915. Wm. M. Van Dyke, Clerk; by Chas. N. Williams, Deputy Clerk, Eq. R. B-16.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, Jr., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,

Complainant.

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation Organized and Existing Under and by Virtue of the Laws of the United States,

Defendant.

Answer to Bill of Complaint.

Now comes the defendant, National Bank of Bakersfield, and answering the Bill of Complaint filed herein by William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, denies that said Alfred W. Bannister was, at the time of the filing of the involuntary petition in bankruptcy referred to in said Complaint, or for a long time prior thereto had been, a merchant. Defendant admits that on the 12th day of January, 1915, the property described in complainant's Bill of Complaint was owned by said Bannister and was situated as in said complaint described; but denies that all or any portion of said property remained in the said warehouses or in the actual possession or under the control or in the custody of the said Alfred W. Bannister after the 23rd day of April, 1915, at which time all of said property was taken possession of by this defendant in the manner and under the circumstances in this Answer hereinafter fully set forth.

Defendant admits that on the 12th day of January, 1915, said Alfred W. Bannister executed to defendant herein each of the instruments referred to in said Bill

of Complaint as having been executed by said Bannister to defendant on said date, and described therein as Exhibit "A" and Exhibit "B," respectively, but defendant alleges that each of said instruments was executed under the circumstances and for the purposes hereinafter in this Answer fully set forth and not otherwise.

Defendant denies that under the laws of the State of California, or otherwise, either of said instruments were, prior to said 23rd day of April, 1915, or at any other time, null and void, or null or void, or of no effect as a lien upon the property in each of said instruments described, respectively, so far as the creditors of said Alfred W. Bannister are concerned, or that the laws of the State of California provide that chattel mortgages are void as against creditors unless recorded in the office of the County Recorder of the county where the property is situated. Defendant denies that either of said chattel mortgages are null or void or of no effect under or by virtue of the provisions of Section 2955 of the Civil Code of the State of California, or under or by virtue of the provisions of any other section of any code of this state.

Defendant denies that on January 12, 1915, or on April 23, 1915, the said Bannister was insolvent.

Defendant denies that at the time of the execution of either of said chattel mortgages or at the time of the recordation thereof defendant had reasonable, or any cause to believe that said mortgages, or either of them, or the enforcement of the lien of said mortgages, or either of said mortgages, would effect a preference in its favor over the other creditors of said bankrupt in the same class, or that the enforcement of the lien

of said mortgages, or either of them, or the recognition thereof as valid liens on the property described therein, or in either of said mortgages, will enable the defendant, as a creditor of said Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that it holds or pretends to hold alleged warehouse receipts covering the above described stock in trade, or any part thereof, as alleged in said Bill of Complaint, or otherwise; and defendant denies that on or subsequent to January 12, 1915, defendant had reasonable, or any, cause to believe that a transfer of title to said or any portion of said property to it from the said Bannister, as security for or in payment of any debt or obligation of said Bannister to it, would effect a preference in its favor over the other creditors of said bankrupt in the same class. Defendant denies that said Alfred W. Bannister delivered any warehouse receipts to defendant as in said Bill of Complaint alleged, or otherwise, or that said Alfred W. Bannister was insolvent at the time it is alleged said warehouse receipts were so delivered.

Defendant denies that all or any portion of the property described in each of said instruments was sold in any manner other than as in this Answer hereinafter more particularly set forth. And defendant denies that at all times between the 9th day of February, 1915, and the 25th day of June, 1915, said Alfred W. Bannister was insolvent, or that at all of said time, or any of said time, up to the filing of

the said involuntary petition in bankruptcy against the said Alfred W. Bannister this defendant had reasonable, or any, cause to believe, or did believe, that any payments of money received by it from or on account of said bankrupt, would, if permitted to stand as valid payments on account of said indebtedness referred to in said Bill of Complaint, effect a preference in defendant's favor over other creditors of said bankrupt in the same class.

Defendant denies that if the payments referred to in said Bill of Complaint are permitted to be and remain the property of this defendant it will result that this defendant, as a creditor of said bankrupt, will obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that between the 4th day of January, 1915, and the date of the filing of this Bill of Complaint said Alfred W. Bannister paid to defendant diverse or any sums of money other or different than as is in this Answer hereinafter fully set forth, or that at the time each or any of said payments said Alfred W. Bannister was insolvent, or that at the time of each or any of said payments to it defendant had reasonable or any cause to believe that the payments so made to it would effect a preference in its favor over other creditors of said bankrupt in the same class; and defendant denies that the retention of all or any part of the money so paid or the appropriation of the same to its own use by defendant will enable defendant to obtain a greater percentage of its debt from said

bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that on the 21st day of December, 1915, or at the time of the execution or delivery of the chattel mortgage in said Bill of Complaint referred to as Exhibit "C," or at the date of the recordation thereof, to-wit, April 23, 1915, said Alfred W. Bannister was insolvent, or that at the time of the recordation of said chattel mortgage this defendant had reasonable or any cause to believe that the enforcement of the lien of said chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class, or that the enforcement of the lien of said mortgage will enable the defendant to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that at the time of the execution or delivery of the chattel mortgage referred to in said Bill of Complaint as Exhibit "D," or at the date of the recordation thereof as in said bill alleged, said Alfred W. Bannister was insolvent, and defendant denies that said chattel mortgage was executed and delivered, or executed or delivered, within four months prior to the filing of the involuntary petition of bankruptcy referred to in said Bill of Complaint, and that at the time of the execution and delivery, or either thereof, or at the time of the recordation thereof, defendant had reasonable, or any, cause to believe that the enforcement of the lien of said chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class, or that the enforce-

ment of the lien of said mortgage will enable defendant to obtain a greater percentage of its debt from the estate of said Bannister than any other creditor or creditors of the same class.

Defendant denies that all or any of the chattel mortgages referred to in said Bill of Complaint were not recorded prior to the 23rd day of April, 1915, by reason or in pursuance of a secret or any agreement between said Alfred W. Bannister and this defendant to keep said documents from record in order that the said Bannister's financial credit in his business might not be impaired or destroyed or otherwise, or with the intent to prevent action being taken by the then creditors of said Bannister to collect their, or any of their, accounts against him. And defendant denies that by virtue of any agreement between the said Bannister and this defendant said Bannister was given a false or any credit or financial standing whereby or by virtue of which all or any of his creditors were induced either to extend credit to the said Bannister for merchandise purchased by him between the 12th day of January, 1915, and the 23rd day of April, 1915, or at any other time, or to forbear to take action to collect their accounts, or any of their accounts, against him. Defendant denies that unless the relief prayed for in complainant's Bill of Complaint be granted that the assets of the estate of Alfred W. Bannister will be materially, or at all, reduced by a large or any amount; or that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims the property in said Bill of Complaint mentioned.

Further answering said Bill of Complaint defendant alleges that on the 11th day of November, 1914, the said Alfred W. Bannister, referred to in complainant's Bill of Complaint, stated to said defendant that he had agreed with one Weyand to purchase all the corn then on said Weyand's ranch near Bakersfield, in said Kern County, and had agreed with one Barnett to purchase all the corn on said Barnett's ranch near Bakersfield, in said county, and had agreed with one Webster to purchase from him all the hay on said Webster's ranch near Bakersfield, in said county, and needed the sum of $2500.00 in order to enable him to comply with each of said agreements; and he then stated to said defendant that he, said Bannister, then had in his warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, 60 tons of oats, and that if defendant would advance to him said sum of $2500.00 he would use the same in performance of his agreement to purchase said corn and hay, and would execute and deliver to defendant his promissory note for $2500.00 payable sixty days thereafter, and execute and deliver to defendant a chattel mortgage upon said 60 tons of oats in said warehouse and upon all corn in said Weyand's ranch, all corn on said Barnett's ranch, and all hay on said Webster's ranch, and that within a reasonable time thereafter he would cause all of said corn and hay so mortgaged to be removed from each of said ranches to said warehouse; thereupon defendant delivered to said Bannister the sum of $2500.00, in gold coin of the United States, and said Bannister then and there executed and delivered to

defendant his promissory note in words and figures as follows, to-wit:

"$2500.00 Bakersfield, California, Nov. 11th, 1914.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of twenty-five hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 50 cents.

Address.....";

and also a chattel mortgage upon 60 tons of oats in said Bannister's warehouse, corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California; all corn on Weyand's ranch, all corn on Barnett's ranch, all hay on Webster's ranch, being the ranches hereinabove referred to, securing the payment of said promissory note according to its terms; which said chattel mortgage is hereunto attached, marked Exhibit "A," and made a part of this Answer.

Within a reasonable time thereafter said Bannister

caused all corn and hay described in said chattel mortgage to be removed from said ranches and stored in his said warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California.

On December 1, 1914, said Bannister requested of defendant to loan to him $1,000.00 and agreed, in consideration thereof, to execute his promissory note therefor, payable ninety days thereafter, and a chattel mortgage upon 55 tons of Egyptian corn then situated in said Bannister's warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California; thereupon and on said day defendant loaned to said Bannister the sum of $1000.00, in gold coin of the United States, and said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"$1000.00 Bakersfield, California, Dec. 1st, 1914.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Stamps cancelled 20 cents.

Address.....";

and also a chattel mortgage upon 55 tons of Egyptian corn then in said Bannister's warehouse at the corner of Fourteenth and D streets, in Bakersfield, California, securing the payment of said note according to its terms, a copy of which said chattel mortgage is hereunto attached, marked Exhibit "B," and made a part of this Answer.

On the 9th day of December, 1914, said Alfred W. Bannister stated to said defendant that he had agreed with one Gregg to purchase all the alfalfa hay on said Gregg's ranch near Bakersfield, in said Kern County, and had agreed with one Garrett to purchase all the barley hay on said Garrett's ranch near Bakersfield, said Kern County, and had agreed with one Machada to purchase all the barley hay on said Machada's ranch near Bakersfield, in said Kern County, and needed the sum of $1500.00 in order to enable him to comply with each of said agreements; he then stated to said defendant that he, said Bannister, then had in his warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, 20 tons of barley and 20 tons of corn unencumbered by chattel mortgage, or otherwise, and that if defendant would advance to him the sum of $1500.00 he would use the same in performance of his said agreements to purchase said hay, and would execute and deliver to defendant his promissory note for $1500.00, payable

thirty days thereafter, and execute and deliver to defendant a chattel mortgage upon said 20 tons of barley and said 20 tons of corn in said warehouse and upon all alfalfa hay on said Gregg's ranch, all barley hay on said Garrett's ranch, and all barley hay on said Machada's ranch, and within a reasonable time thereafter he would cause all of said hay so mortgaged to be removed from each of said ranches to said warehouse. Thereupon defendant delivered to said Bannister the sum of $1500.00, gold coin of the United States, and said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"$1500.00 Bakersfield, California, Dec. 9th, 1914.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly, and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 30 cents.

Address.....";

and also a chattel mortgage upon the said 20 tons of barley and said 20 tons of corn in said warehouse and all alfalfa hay on Gregg's ranch, all barley hay on Garrett's ranch and all barley hay on Machada's ranch, being the ranches hereinabove referred to, securing the payment of said promissory note according to its terms, a copy of which said chattel mortgage is hereunto attached, marked Exhibit "C," and made a part of this Answer.

Within a reasonable time thereafter said Bannister caused all of said hay described in said chattel mortgage to be removed from said ranches and stored in said warehouse.

On December 21, 1914, the said Alfred W. Bannister stated to said defendant that he had agreed with one Heinrich to purchase all corn and oats then on said Heinrich's ranch near Bakersfield, in said Kern County, and had agreed with one Randolph to purchase all corn on said Randolph's ranch near Bakersfield, in said county, and had agreed with one Gulley to purchase all corn and oat hay on said Gulley's ranch near Bakersfield, in said county, and needed the sum of $1500.00 in order to enable him to comply with each of said agreements: and he then stated to defendant that if defendant would advance to him said sum of $1500.00 he would use the same in performance of his said agreements to purchase said corn, oats and oat hay and would execute and deliver to defendant his promissory note for $1500.00, payable ninety days thereafter, and execute and deliver to defendant a chattel mortgage upon all corn and oats on said Heinrich's ranch, upon all corn on said Randolph's ranch,

and upon all oat hay on Gulley's ranch, and that within a reasonable time thereafter he would cause all of said corn and hay so mortgaged to be removed from each of said ranches to said warehouse; thereupon defendant delivered to said Bannister the sum of $1500.00, gold coin of the United States, and said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"$1500.00 Bakersfield, California, Dec. 21st, 1914.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of.....per cent per.....from date, until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Stamps cancelled 30 cents.

Address.....";

and also a chattel mortgage upon all corn and oats on Heinrich's ranch, all corn on Randolph's ranch, and all corn and oat hay on Gulley's ranch, being the

ranches hereinabove referred to, securing the payment of said promissory note according to its terms, a copy of which said chattel mortgage is hereunto attached, marked Exhibit "D," and made a part of this Answer.

Within a reasonable time thereafter said Bannister caused all of said corn, oats and oat hay described in said chattel mortgage to be removed from said ranches and stored in said warehouse.

On January 4, 1915, said Alfred W. Bannister requested of defendant that it loan him the sum of $1500.00, and stated to defendant that if it would do so he, said Bannister, would execute to defendant his promissory note for said sum, due sixty days thereafter, and also a chattel mortgage upon 60 tons of corn, 20 tons of alfalfa hay, and 50 tons of barley hay then situated in Bannister's warehouse at Wible Siding, Kern County, California, securing the payment of said note according to its terms. That thereupon defendant loaned to said Bannister $1500.00 in gold coin of the United States, in consideration of which said Bannister executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"$1500.00 Bakersfield, California, Jany 4th, 1915.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest

not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note, and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 30 cents.

Address:.....";

and also a chattel mortgage upon 60 tons of corn, 20 tons of alfalfa hay, and 50 tons of barley hay in Bannister's warehouse, Wible Siding, Kern County, California, securing the payment of said promissory note according to its terms, a copy of which said chattel mortgage is hereunto attached marked Exhibit "E" and made a part of this Answer.

On January 5, 1915, said Alfred W. Bannister requested defendant to loan him the sum of $1000.00 and agreed, in consideration thereof, to execute and deliver to defendant his promissory note for $1000.00, payable thirty days thereafter, and execute and deliver to defendant a chattel mortgage upon 70 tons of Egyptian corn then in Bannister's warehouse, corner Fourteenth and D streets, Santa Fe Yards, Bakersfield, California, securing the payment of said note according to its terms. Thereupon defendant, on said day, loaned to said Bannister the sum of $1000.00, in gold coin of the United States, in consideration of which said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"$1000.00 Bakersfield, California, Jany 5th, 1915.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight percent per annum from date until paid, interest payable monthly and, if not so paid to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 20 cents.

Address.....";

and a chattel mortgage upon said 70 tons of Egyptian corn then situated in Bannister's warehouse, corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California, securing the payment of said note according to its terms, a copy of which said chattel mortgage is attached hereto marked Exhibit "F" and made a part of this Answer.

At the same time said Bannister executed and delivered to defendant a chattel mortgage upon one four-passenger, convertible, Six Stutz 1913 model automobile, series 4B, car No. 1006, Register No. 27987, as additional security for the payment of said note for $1000.00 executed January 4, 1915, and said note for

$1500.00 executed January 5, 1915, hereinabove set forth, a copy of which said chattel mortgage is set forth in plaintiff's Bill of Complaint and described as Exhibit "D," which is hereby referred to and made a part of this Answer.

On January 12, 1915, said Alfred W. Bannister requested of defendant that it loan to him the sum of $1500.00; defendant stated to said Bannister that it would loan him said sum of $1500.00, to be paid ninety days thereafter, provided the said Bannister would then execute and deliver to defendant a chattel mortgage upon all hay and grain then in the warehouse of said Bannister, one situated at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California, and the other at Wible Siding, said Kern County, securing the payment of each of the promissory notes hereinabove set forth in addition to the promissory note of $1500.00 to be executed for the sum then requested to be loaned to him by defendant; that said Bannister agreed so to do, and defendant then and on said date loaned to said Alfred W. Bannister the sum of $1500.00 and thereupon said Bannister executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"$1500.00 Bakersfield, California, Jany 12th, 1915.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to

become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 30 cents.

Address.....";

and two certain chattel mortgages, one of which is upon 200 tons of grain hay located at Bannister's warehouse, Wible Siding, Kern County, California, which said chattel mortgage is hereto attached, marked Exhibit "G," and made a part of this Answer, and the other of which is upon 3345 sacks of white Egyptian corn, 768 sacks of red Egyptian corn, 315 sacks of feterita, 750 sacks R. barley, 145 sacks barley, 385 sacks oats, 95 sacks shelled corn, 74 sacks wheat, 975 bales of bale ties, 1877 bales alfalfa, 1135 bales grain hay, 142,400 pounds ear corn in the crib, all of which was then situated in Bannister's warehouse, corner Fourteenth and D streets, Santa Fe Yards, Bakersfield, and 1060 sacks red Egyptian corn and 445 bales of barley hay then situated in said Bannister's warehouse at Wible Siding, in said Kern County; a copy of which said chattel mortgage is hereunto attached, marked Exhibit "H," and made a part of this Answer. That all of the property described in each of said chattel mortgages, Exhibits "G" and "H," respectively, except

the 975 bales of bale ties and the 315 sacks of feterita included in Exhibit "H," was, at said time, covered by one or the other of the chattel mortgages hereinabove referred to as Exhibits "A" to "F," inclusive.

At the time each and all of the chattel mortgages hereinabove set forth and described were executed and delivered by said Bannister to defendant as herein alleged, it was understood and agreed between said Bannister and said defendant that if said promissory notes described in each of said chattel mortgages were not paid by said Bannister according to their terms, defendant might take possession of the property so mortgaged and sell the same at private sale and apply the proceeds thereof in payment of each and all of said promissory notes described in each of said chattel mortgages. That on or about the 23rd day of April, 1915, defendant took possession of all of the property described in each and all of said chattel mortgages and thereafter sold the same, realizing from such sale, on the 5th day of May, 1915, the sum of $500.00; on the 6th day of May, 1915, the sum of $500.00; on the 10th day of May, 1915, the sum of $1500.00; on the 11th day of May, 1915, the sum of $2500.00; on the 14th day of May, 1915, the sum of $500.00; on the 17th day of May, 1915, the sum of $300.00; on the 19th day of May, 1915, the sum of $1250.00; on the 20th day of May, 1915, the sum of $700.00; on the 22nd day of May, 1915, the sum of $450.00; on the first day of June, 1915, the sum of $500,00; and on the 24th day of June, 1915, the sum of $181.13. Between the 10th day of February, 1915, and the 4th day of May, 1915, said Bannister paid to

defendant, on account of said notes, in addition to the sums realized from the sale of said property last hereinabove mentioned, the sum of $1800.00.

None of the chattel mortgages hereinabove referred to and described were recorded except the chattel mortgage described as Exhibit "H," which said chattel mortgage was recorded in the Recorder's office of Kern County on the 23rd day of April, 1915. There was no agreement between said Bannister and defendant that the chattel mortgages hereinabove referred to, or either of them, should not be placed of record, and the same were not placed of record by defendant solely for the reason that defendant was informed and believed that under the laws of California each and all of said chattel mortgages created valid and enforceable liens upon the property described in each thereof independent of the recordation of said mortgages. The money received from the sale of said property, as hereinabove alleged, was credited by defendant upon said notes as it was received by it, as hereinabove alleged.

WHEREFORE, defendant asks that plaintiff take nothing by the said action; that said bill be dismissed, and that it have its costs herein expended.

W. N. GOODWIN and
HUNSAKER & BRITT,
Attorneys for Defendant.

EXHIBIT A.

THIS MORTGAGE, made the 11th day of November, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation

....., mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to wit:

At Bannister's Warehouse, corner of 14th and D Sts., Santa Fe Yards, Bakersfield, California, sixty tons of oats.

All corn on Weyand's Ranch.

" " " Barnett's Ranch.

" hay " Webster's Ranch.

All located in Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to wit:

$2500.00

Bakersfield, California, Nov. 11th 1914. No....

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of twenty five hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps

50 cents

It is also agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 11th day of November, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me this 11th day of November, 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 11th day of November, 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

EXHIBIT B.

THIS MORTGAGE, made the 1st day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation,

mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to wit:

At Bannister's Warehouse, corner 14th and D Sts., Santa Fe Yards, Bakersfield, California.

Fifty-five tons of Egyptian corn.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to wit:

$1000.00

Bakersfield, California, Dec. 1st 1914 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER

Address Stamps Cancelled

20 cents

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 1st day of December, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and

without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me this 1st day of Dec., 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me this 1st day of Dec., 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

EXHIBIT C.

THIS MORTGAGE, made the 9th day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth, That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

Twenty tons of barley and twenty tons of corn, at Bannister's Warehouse, 14th and D Sts., Santa Fe Yards, Bakersfield, California.

All alfalfa hay on Gregg's Ranch.

" barley " " Garrett's Ranch.

" " " " Machada's Ranch.

All located in Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

$1500.00

Bakersfield, California, Dec. 9th 1914 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps

30 cents

It Is Also Agreed that if the said mortgagor shall

fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 9th day of December, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith

and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 9th day of December, 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 9th day of December, 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

EXHIBIT D.

THIS MORTGAGE, made the 21st day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to

said mortgagee all that certain personal property situated and described as follows, to-wit:

All corn and oats on Heinrich's Ranch,
" " " Randolph's "
" " and oat hay on Gulley's "
All located in Kern County, California,

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

$1500.00

Bakersfield, California, Dec. 21st 1914 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of per cent per from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note pro-

vided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 21st day of December, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 21st day of Dec., 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 21st day of Dec., 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

EXHIBIT E.

THIS MORTGAGE, made the 4th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to wit:

Sixty tons of corn, twenty tons of alfalfa hay, and fifty tons of barley hay, at Bannister's Warehouse, Wible Siding, Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

$1500.00

Bakersfield, California Jany 4th 1915 No....

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date, until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps
30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has here-

unto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 4th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 4th day of Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County of Kern.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 4th day of Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County of Kern.

EXHIBIT F.

THIS MORTGAGE, made this 5th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

At Bannister's Warehouse, corner 14th and D Sts., Santa Fe Yards, Bakersfield, California, seventy tons of Egyptian corn.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

$1000.00

Bakersfield, California, Jany 5th 1915 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps
20 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property, and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 5th day of January, in the year one thousand nine hundred and fifteen before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 5th day of Jan., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield,

the mortgagee named in the foregoing mortgage, to-wit: the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 5th day of Jan., 1915.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

EXHIBIT G.

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

Two hundred tons of grain hay located at Bannister's Warehouse, Wible Siding, Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

$1500.00

. Bakersfield, California, Jany 12th 1915 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at

the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps
30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose

name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

EXHIBIT H.

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit: at Bannister's Warehouse, corner of 14th & D Sts., Santa Fe Yards, Bakersfield, California.

White Egypt Corn	3345	Sacks	410,000″	$30.00	$6,000.00
Red " "	768	"	96,000″	26.00	1,248.00
Feterita	315	"	37,800″	26.00	491.40
R. Barley	750	"	57,750″	28.00	808.50
Barley	145	"	14,500″	26.00	188.50
Oats	385	"	30,800″	28.00	431.20
Shelled Corn	95	"	10,000″	30.00	150.00
Wheat	74	"	10,360″	30.00	155.40
Bale Ties	975	Bales		1.15	1,120.00
Alfalfa	1877	"	236,150″	7.00	826.50
Grain Hay	1134	"	140,600″	8.00	562.40
Ear Corn in Crib			142,200	22.00	1,562.00

Wible Warehouse

Red Egypt Corn	1060	126,700″	26.00	1,647.10
Barley Hay	445	52,000″	8.00	208.00
		Total		$15,399.00

as security for the payment to the said mortgagee of promissory notes, in the words and figures following, to-wit:

$2500.00

Bakersfield, California Nov. 11th 1914 No....

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of twenty-five hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address 50 cents stamps cancelled.

$1000.00

Bakersfield, California, Dec. 1st 1914 No....

Ninety days after date, for value received, I promise

to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps
20 cents cancelled.

$1500.00

Bakersfield, California, Dec. 9th 1914 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
30 cents.

$1500.00

Bakersfield, California, Dec. 21st 1914 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly, and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
30 cents.

$1500.00

Bakersfield, California, Jany 4th 1915 No....

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at

the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address

Stamps Cancelled 30 cents.

$1,000.00

Bakersfield, California Jan 5th 1915 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
20 cents.

$1500.00

Bakersfield, California Jan 12th 1915 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

Endorsed: Filed for record at the request of National Bank of Bakersfield Apr. 23, A. D. 1915, at 15 min. past 4 o'clock P. M., and recorded in Vol. 29 of Chat. Mtgs., page 267, Kern County Records. Chas. A. Lee, Recorder. By Fred W. Lee, Deputy Recorder. 220. Compared.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., as Trustee, etc., Complainant, vs. National Bank of Bakersfield, a corporation, Defendant. Answer to Bill of Complaint. Service of the within Answer is hereby admitted this 7th day of September, 1915. Ernest U. Schroeter, Lucius K. Chase, Attorneys for Complainant. Filed Sep. 7, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. C. L. Claflin, W. N. Goodwin, and Hunsaker & Britt, 1132-1143 Title Insurance

Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendant.

In Equity. No. B. 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,

Defendant.

Answer to Amendment to Bill of Equity and to the Bill as Thus Amended.

Now comes the defendant above named, and makes and files this, its answer, to the amendment to the bill in equity herein and to the bill as thus amended, in addition and supplemental to the answer herein, as follows:

(1) Alleges that the purported bill as thus amended does not, nor does any paragraph thereof, state facts constituting a valid cause of action in equity, nor does said purported bill in equity as thus amended, nor any paragraph thereof, state facts sufficient to entitle plaintiff to the relief sought in and by said amended bill, nor facts sufficient to give this court jurisdiction in equity of plaintiff's claims therein urged.

(2) Alleges that said amendment to said purported bill in equity does not contain any allegations of fact,

but that said purported allegations of fact are merely legal conclusions argumentatively stated.

(3) Further answering said purported amended bill in equity, and particularly said amendment thereto, defendant alleges that said purported amended bill in equity, and particularly said amendment thereto, lack certainty in each of the following respects, the specifications of uncertainty hereinafter set forth being relied upon individually and collectively:

(a) It cannot be ascertained what creditors, if any, said Alfred W. Bannister had on the 24th of May, 1915;

(b) It cannot be ascertained what was the class of the creditors, if any, of said Alfred W. Bannister on the 24th of May, 1915;

(c) It cannot be ascertained what were the amounts of the respective claims, if any, against said Alfred W. Bannister on the 24th of May, 1915;

(d) It cannot be ascertained when the various claims, if any, against said Alfred W. Bannister were incurred.

(4) Further answering said purported amended bill in equity, and particularly the amendment thereto, defendant says that it is without information or belief sufficient to enable it to answer the allegations of said amendment, and for lack of such information or belief denies that, at the time said Alfred W. Bannister was adjudged a bankrupt, or on the 24th of May, 1915, or at any other time, he had various or any creditors other than the defendant herein, or that many or any of them held unsecured claims or claims at all against him; and for like reason denies that the indebtedness,

if any, in favor of certain of said creditors, if any, was incurred subsequent to the 12th day of January, 1915, but prior to the 23rd day of April, 1915, or incurred at all; and denies that the indebtedness, if any, in favor of certain other of said creditors, if any, was incurred on various or any date prior to the 12th day of January, 1915, or incurred at all.

WHEREFORE, defendant prays that complainant take nothing by said purported amended bill in equity, or said amendment thereto, and that it be hence dismissed with its costs.

C. L. CLAFLIN,
G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendant.

United States of America,
Southern District of California,
County of Kern,—ss.

J. K. Russell, being duly sworn, deposes and says, that he is the cashier of the defendant, and makes this verification on behalf of said defendant; that he has read the foregoing answer, and knows the contents thereof: that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

J. K. RUSSELL.

Subscribed and sworn to before me this 1st day of April, 1916.

[Seal] C. L. CLAFLIN,
Notary Public in and for the County of Kern, State of California.

[Endorsed]: Original. No. B 94 Eq. In the United States District Court, Southern District of California, Northern Division. William H. Moore, Jr., etc., Plaintiff, vs. Nat. Bank of Bakersfield, Defendant. Answer to Amendment to Bill. Receipt of a copy of the within is hereby admitted this 3rd day of April, 1916. Lucius K. Chase, Attorney for Pltff. Filed Apr. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Deft.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. B-94.

WM. H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,

Defendant.

Amended Bill in Equity.

To the Honorable Judges of the District Court of the United States, in and for the Southern District of California:

Comes now Wm. H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, and leave of the Court being first duly had, files this his amendment

to the bill of complaint filed herein, and by way of such amendment, and additional thereto, alleges:

I.

That at the time the said Alfred W. Bannister was adjudicated a bankrupt herein, to-wit, on the 24th day of May, 1915, he had various creditors other than the defendant herein, many of whom held unsecured claims against him; that the indebtedness in favor of certain of said unsecured creditors was incurred by said bankrupt subsequent to the 12th day of January, 1915, but prior to the 23rd day of April, 1915, while the indebtedness in favor of certain other of said unsecured creditors was incurred by said bankrupt on various dates prior to the 12th day of January, 1915, and said creditors had no knowledge of said mortgage referred to in said complaint prior to their recordation.

WM. H. MOORE, JR.,

As Trustee of the Estate of Alfred W. Bannister, Bankrupt.

LUCIUS K. CHASE,

ERNEST U. SCHROETER,

Attorneys for Complainant.

United States of America,
Southern District of California,
Southern Division,
County of Los Angeles,—ss.

Wm. H. Moore, Jr., the complainant in the foregoing Amendment to Bill in Equity, being duly sworn, says that he has read the foregoing Amendment to Bill in Equity and knows the contents thereof, and that the same is true of his own knowledge, except as to those

matters therein stated to be on information and belief, and as to those matters that he believes it to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 18th day of March, 1916.

[Seal] M. LUCILE ADAMS,

Notary Public in and for the County of Los Angeles, State of California.

It Is Hereby Stipulated that the foregoing Amendment to Bill of Complaint may be filed and considered as engrossed, with leave to defendant to plead thereto to the bill as thus amended, within 10 days from filing thereof.

G. HAROLD JANEWAY,
C. L. CLAFLIN,
HUNSAKER & BRITT,
Attys. for Defendant.

It Is So Ordered.

TRIPPET,
Judge of the District Court.

[Endorsed]: Original. No. B-94. In the District Court of the United States, in and for the Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee of the Estate of Alfred W. Bannister, etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Amendment to Bill in Equity. Filed Apr. 5, 1916. Wm. M. Van Dyke, Clerk; by R. S. Zimmerman, Deputy Clerk. Lucius K. Chase, Ernest U. Schroeter, Attorneys for Complainant.

At a stated term, to-wit: the January term, A. D., 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the City of Los Angeles, on Wednesday, the twenty-fourth day of May, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

WM. H. MOORE, JR., Trustee, etc.,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

Nos. B-94 Equity, S. D., and A 32 Equity, N. D., Combined for Final Hearing.

Copy of Minute Order Amending Bill.

These causes, combined for final hearing in open court, coming on this day for further proceedings and orders on said final hearing; Lucius K. Chase, Esq., and Ernest U. Schroeter, Esq., appearing as counsel for complainant in each cause; G. Harold Janeway, Esq., appearing as counsel for defendant in each cause; I. Benjamin, appointed shorthand reporter in these causes, being present and acting as such reporter; now, pursuant to the stipulation of the parties, by their solicitors of record, which is filed in open court, in Cause No. B 94 Equity, S. D., it is ordered that the bill of complaint in said Cause No. B 94 Equity, S. D., be amended by inserting on page 4 thereof, in line 22, after "1915," the words "and now

are," and that the amendment to said Bill of Complaint be amended by inserting in the fifth line of the first paragraph, after the word "said" and before the word "creditors" the word "unsecured," and by adding at the end thereof the following: "And said creditors had no knowledge of said mortgages referred to in said complaint prior to their recordation," said amendments to be made by the Clerk and attested by him with a reference to this order; and W. C. Wells and Minnie Meyer having respectively been called and sworn as witnesses on behalf of complainant, and having given their testimony; and Alfred W. Bannister, a witness on behalf of complainant, having been recalled for further examination, and having given his testimony, and, in connection with the testimony of said witness, complainant having offered certain exhibits, which are admitted in evidence in his behalf, to-wit: Compl's Ex. 10, eight checks drawn by Alfred W. Bannister, in favor of National Bank of Bakersfield, aggregating $7,700.00; and Compl's Ex. 11, accounts of National Bank of Bakersfield, contained in ledger of A. W. Bannister at page 106 thereof; and Court, at the hour of 11:25 o'clock a. m., having taken a recess for 10 minutes; and now, at the hour of 11:35 o'clock a. m., Court having reconvened; and counsel and the shorthand reporter being present as before; and Alfred W. Bannister, a witness on behalf of complainant, having again taken the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, defendant having offered certain exhibits, which are admitted in evidence in its behalf, to-wit: Deft's Ex. A, chattel mortgage, Alfred

W. Bannister to The National Bank of Bakersfield, dated Nov. 11, 1914; Deft's Ex. B, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Dec. 1, 1914; and Deft's Ex. C, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Dec. 9, 1914; and Court, at the hour of 12 o'clock, m., having taken a recess until the hour of 2 o'clock, p. m., of this day;

And now, at the hour of 2 o'clock, p. m., Court having reconvened; and counsel and shorthand reporter being present as before; and Alfred W. Bannister, a witness on behalf of complainant, having taken the stand for further examination and having given his testimony; and, in connection with the testimony of said witness, defendant having offered certain exhibits, which are admitted in evidence in its behalf, to-wit: Deft's Ex. D, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Jan. 4, 1915; Deft's Ex. E, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Jan. 5, 1915; Deft's Ex. F, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Jan. 5, 1915; Deft's Ex. G, deed of trust from Alfred W. Bannister to J. K. Russell, and F. J. Galtes, dated Apr. 8, 1915; and, also in connection with the testimony of said witness, complainant having offered certain exhibits, which are admitted in evidence in his behalf, to-wit: Compl's Ex. 12, pass-book of Alfred W. Bannister, account with The National Bank of Bakersfield; Compl's Ex. 13, freight receipts issued by Atchison, Topeka & Santa Fe Railway Company to Alfred W. Bannister; Compl's Ex. 14, bundle of

checks drawn by Alfred W. Bannister, with statement dated Apr. 29, 1915; Compl's Ex. 15, bundle of checks drawn by Alfred W. Bannister, with statement dated Feb. 27, 1915; Compl's Ex. 16, bundle of checks drawn by Alfred W. Bannister, with statement dated 3/29/1915; and Compl's Ex. 17, certified copy of adjudication as a bankrupt of Alfred W. Bannister, in bankruptcy matter No. 2026 Bkcy., S. D., in this Court; and James E. Price having been called and sworn as a witness on behalf of complainant, and having given his testimony; and J. K. Russell having been called and sworn as a witness on behalf of complainant, and having given his testimony; and complainant having rested; and G. Harold Janeway, Esq., of counsel for defendant, having, in each of the two cases, B 94 Equity S. D., and A 32 Equity N. D., moved the Court to dismiss the Bill of Complaint; and each of said causes having been submitted to the Court for its consideration and decision, without argument, on said motion to dismiss; it is by the Court ordered that each of said motions to dismiss the Bill of Complaint in causes Nos. B 94 Equity, S. D., and A 32 Equity, N. D., be, and the same hereby is overruled; and J. K. Russell, a witness for complainant, having been recalled as a witness on behalf of defendant, and having given his testimony; it is, at the hour of 4:21 o'clock p. m., ordered that these causes be, and they hereby are continued for further hearing until Thursday, the 25th day of May, 1916, at 10 o'clock a. m.

[Endorsed]: No. B 94 Eq. United States District Court, Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee, vs. National

Bank of Bakersfield. Copy of Minute Order amending Bill. Filed Jul. 28, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WM. H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation, Organized and Existing Under and By Virtue of the Laws of the United States,

Defendant.

Decree in Equity.

This cause came on to be heard at the preceding term, and was argued by counsel, and thereupon, upon consideration thereof, it is hereby ordered, adjudged and decreed as follows, viz.:

That certain chattel mortgage bearing date December 21, 1914, whereby Alfred W. Bannister purported to mortgage to The National Bank of Bakersfield, a corporation, the corrugated iron and frame warehouse building located on the Southern Pacific Company's land at Wible Orchard Siding, Kern County, California, which chattel mortgage was recorded April 23, 1913, in Volume 29 of Chattel Mortgages, at page 265 thereof, Kern County Records, is hereby decreed to be null and void and of no effect, and the record thereof as aforesaid is hereby cancelled.

That certain chattel mortgage bearing date January 5, 1915, whereby Alfred W. Bannister purported to mortgage to The National Bank of Bakersfield, a corporation, a 4-passenger convertible "6" Stutz automobile, Model 1913, Series 4-B, Car No. 1006, which said chattel mortgage was recorded April 23, 1915, in Volume 29 of Chattel Mortgages, at page 272 thereof, Kern County Records, is hereby decreed to be null and void and of no effect, and the record thereof, as aforesaid, is hereby cancelled.

That certain chattel mortgage bearing date January 12, 1915, whereby Alfred W. Bannister purported to mortgage to the National Bank of Bakersfield, a corporation, two hundred tons of grain and hay located at Bannister's warehouse, Wible Orchard Siding, Kern County, California, which chattel mortgage was recorded April 23, 1915, in Volume 29 of Chattel Mortgages, at page 263 thereof, Kern County Records, is hereby decreed to be null and void and of no effect and the record thereof, as aforesaid, is hereby cancelled;

That certain chattel mortgage bearing date January 12, 1915, whereby Alfred W. Bannister purported to mortgage to The National Bank of Bakersfield, a corporation, various items of grain and hay, therein specified, which said chattel mortgage was recorded April 23, 1915, in Volume 29 of Chattel Mortgages, at page 267 thereof, Kern County records, is hereby decreed to be null and void and of no effect and the record thereof, as aforesaid, is hereby cancelled.

And it appearing that payments in the sum of one thousand dollars ($1,000.00) made by said Alfred W. Bannister to said bank between April 23rd, 1915,

and May 5th, 1915, on which date the petition in involuntary bankruptcy in the matter of the estate of Alfred W. Bannister, bankrupt, was filed, constituted a preference within the meaning of the provisions of the United States Bankruptcy Acts, and as such are invalid; and that subsequent to May 5th, 1915, defendant took possession of and sold the undisposed portion belonging to said bankrupt's estate covered by the two last mentioned mortgages and other similar property of said bankrupt commingled therewith, and received from the proceeds of the sale thereof the sum of eight thousand three hundred eighty-one dollars and thirteen cents ($8,381.13), the reasonable value thereof; it is decreed that said defendant pay to Wm. H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, the aforesaid sums aggregating nine thousand three hundred eighty-one dollars and thirteen cents ($9,381.13), together with interest thereon at seven per cent per annum from the 10th day of July, 1915.

And it appearing that there was no moral turpitude on the part of said defendant bank,

It Is Further Ordered: That within sixty days after the entry of final judgment herein said National Bank of Bakersfield may file its unsecured general claim against the estate of Alfred W. Bannister, bankrupt, in the amount unpaid upon the promissory notes referred to in said purported chattel mortgages, and said claim shall be allowed as an unsecured claim, in the amount so unpaid, in the event defendant shall have first paid the final judgment herein.

Judgment is hereby directed in favor of complainant

and against defendant, for complainant's costs herein, taxed at the sum of $72.56.

Dated, July 24th, 1916.

OSCAR A. TRIPPET,
Judge.

Decree entered and recorded July 24, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk.

[Endorsed]: Original. In Equity. B 94 Eq. In the United States District Court, Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee of the Estate of Alfred W. Bannister, a Bankrupt, Complainant, vs. National Bank of Bakersfield, a Corporation, etc., Defendant. Decree in Equity. Filed July 24, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk. 4 Eq. Jl 29.

Whereupon, said Bill of Complaint, Subpoena ad respondendum, Answer of Defendant, Answer to Amendment to Bill, Amendment to Bill, Copy Order Amending Amendment to Bill, and Final Decree are hereto annexed, said Final Decree having been duly signed, filed and enrolled, pursuant to the practice of said District Court.

Attest, etc.,
[Seal] WM. H. VAN DYKE,
Clerk.
By Leslie S. Colyer,
Deputy Clerk.

[Endorsed]: No. B 94 Equity. In the District Court of the United States for the Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield. Enrolled papers. Filed July 28, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk. Recorded Eq. Jl. Book No. 4, page 29.

In Equity. No. A 32.

In the District Court of the United States in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,

Complainant.

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation Organized and Existing Under and By Virtue of the Laws of the United States; J. K. RUSSELL and J. F. GALTES,

Defendants.

Citation on Appeal.

United States of America,—ss.

To WILLIAM H. MOORE, JR., Trustee of the Estate of Alfred W. Bannister, a Bankrupt, Greeting:

You Are Hereby Cited and Admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court for the Southern District of California, Southern Division, and filed in the Clerk's office of said court on the 16th day of January, 1917, in a cause wherein National Bank of Bakersfield, a corporation, J. K. Russell and J. F. Galtes are appellants, and you are respondent, to show cause, if any, why the decree rendered against said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Oscar A. Trippet, Judge of the United States District Court for the Southern District of California, Southern Division, this 16th day of January, 1917.

OSCAR A. TRIPPET,
District Judge.

Service of a copy of the within citation is hereby admitted, this 16th day of January, 1917.

LUCIUS K. CHASE,
E. U. SCHROETER,
Attorneys for Respondent.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a Corporation, etc., et al., Defendants. Citation on Appeal. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendants.

In the District Court of the United States of America in and for the Southern District of California, Northern Division.

No. In Equity.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,
Complainant.

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation Organized and Existing Under and By Virtue of the Laws of the United States; J. K. RUSSELL and J. F. GALTES,
Defendants.

Bill of Complaint.

To the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Northern Division: In Chancery Sitting:

William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, a citizen of the State of California, residing in Los Angeles County in said state, brings this his Bill of Complaint against National Bank of Bakersfield, a banking corporation organized and existing under and by virtue of the laws of the United States, a citizen of the State of California, with its principal place of business in the City of Bakersfield, in Kern County in said State; and J. K. Russell and F. J. Galtes, citizens of the State of California, residing in the City of Bakersfield, in Kern County in said State of California.

And therefore complainant complains and says:

That on the 5th day of May, A. D., 1915, W. C. Wells, Security National Bank of Los Angeles, a corporation, William H. Mead and National Bank of Pasadena, a corporation, as petitioning creditors filed in the District Court of the United States in and for the Southern District of California, Southern Division, an involuntary petition in bankruptcy against Alfred W. Bannister, a citizen of the State of California and residing in the City of Los Angeles in Los Angeles County, in said state, praying that the said Alfred W. Bannister be adjudged a bankrupt and that service of said petition, with a subpoena, be made upon him; that thereupon upon, the same day, a subpoena duly issued out of and under the seal of said

Court directed to the said Bannister, commanding him to appear and answer the said petition on the 17th day of May, 1915; that thereafter, to-wit, on the 12th day of May, 1915, the said subpoena with a copy of the said petition was duly served upon the said Bannister at the City of Bakersfield, Kern County, California, and on the 24th day of May, 1915, the said Bannister was, by the aforesaid Court, declared and adjudged a bankrupt.

That thereafter, to-wit, on the 22nd day of June, 1915, at the first meeting of the creditors of said bankrupt regularly called for such purpose, your complainant herein was duly elected Trustee of said bankrupt estate, and qualified as such Trustee on the same day, and has at all times since said 22nd day of June, 1915, been, and is now, Trustee of said bankrupt estate acting in the proper and full discharge of his duties as such Trustee.

Your complainant further says that he is informed that the defendant, National Bank of Bakersfield, claims to have advanced, prior to the 8th day of April, 1915, to the said bankrupt Bannister, and by way of loan, various sums of money, and that to evidence the said alleged loans, the said Bannister executed and delivered to the said National Bank of Bakersfield prior to said 8th day of April, 1915, divers promissory notes as follows, to-wit:

One dated November 11, 1914, for twenty-five hundred dollars ($2500); one dated December 1, 1914, for one thousand dollars ($1,000.00); one dated December 9, 1914, for fifteen hundred dollars ($1500.00); one dated December 21, 1914, for fifteen hundred dollars

($1500.00); one dated January 4, 1915, for fifteen hundred dollars ($1500.00); one dated January 5, 1915 for one thousand dollars ($1,000.00) and one dated January 12, 1915, for fifteen hundred dollars ($1500.00).

Your complainant further says that on and prior to the 8th day of April, 1915, the said Alfred W. Bannister was the owner in fee simple, and in possession of, the following described real property; situated in the County of Kern, State of California, to-wit:

The south one-half (S½) of the southeast quarter (S.E.¼) of the southeast quarter (S.E.¼) of section thirty-five (35), township 11 north, range 23 west, San Bernardino base and meridian.

Your complainant further says that on or about the 8th day of April, 1915, the said Alfred W. Bannister executed to the defendants, J. K. Russell and F. J. Galtes, a certain instrument in writing, purporting to be a deed of trust, and purporting therein and thereby to transfer, convey and set over to the said defendants, Russell and Galtes, as trustees, the above described real property, as and for security for the payment of certain promissory notes aggregating ten thousand dollars ($10,000), executed by the said Alfred W. Bannister to the said National Bank of Bakersfield, and which said notes are the notes hereinabove referred to, and as security for any further or additional sum or sums of money, with interest thereon, that might under the provisions of said purported Deed of Trust, be paid, expended, or advanced by, or that might otherwise be or become due, or payable to the said defendants Russell and Galtes or the said defendant

National Bank of Bakersfield, and also as and for security for the repayment of such additional sums, with interest thereon, as might thereafter be borrowed or received by the said Alfred W. Bannister from the said National Bank of Bakersfield; a copy of which alleged deed of trust, marked "Exhibit A," is hereto, to this Bill of Complaint, annexed and hereby made a part hereof.

Your complainant is informed and believes, and upon such information and belief charges the fact to be, that the said defendants, National Bank of Bakersfield, J. K. Russell, and F. J. Galtes, did not, nor did either of them, pay, advance, or expend any sum or sums of money whatsoever under the provisions of said alleged deed of trust, nor did the said defendant, National Bank of Bakersfield, make any further or other loans of money whatsoever to the said Alfred W. Bannister, subsequent to the execution of said alleged deed of trust.

Your complainant further says that the said purported deed of trust was executed on the 8th day of April, 1915, and was recorded in the office of the Recorder of Deeds of Kern County, California, on the 23rd day of April, 1915, in Volume 295 of Trust Deeds, at page 328, Kern County Records; that the said purported deed of trust was executed and recorded within four months prior to the filing of the hereinabove mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at the time of the execution, and also at the time of the recordation of said purported deed of trust, the said Alfred W. Bannister was insolvent; that at the time of the

execution and recordation of said instrument, the said National Bank of Bakersfield had reasonable cause to believe that the transfer of the title to said property, under said deed of trust to, the defendants Russell and Galtes, as trustees, for the purpose of securing the payment of the aforesaid promissory notes, would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of said purported deed of trust, or the recognition thereof as a valid transfer of the aforesaid property, for the purposes above mentioned, will enable the defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further says that said purported deed of trust was executed by the said Bannister to the said defendants J. K. Russell and F. J. Galtes for the purpose and with the intent of defrauding the creditors of the said Alfred W. Bannister.

Your complainant further says that unless the relief herein prayed for be granted to him by Your Honors, that the assets of the said estate of Alfred W. Bannister will be materially reduced by a large amount, and that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims, free of all liens and encumberances, the property hereinabove mentioned.

To the end, therefore, that your complainant may obtain relief in the premises in this Honorable Court, where alone adequate relief can be afforded, he prays:

1. That the said defendants, National Bank of Bakersfield, J. K. Russell and F. J. Galtes, each be compelled to make full, true, direct and perfect answer to each and every allegation of this Bill of Complaint according to the best of its and his knowledge, remembrance, information and belief, but not on oath, answer on oath being expressly waived;

2. That the said purported deed of trust, executed by the said bankrupt, Alfred W. Bannister, to the said defendants, J. K. Russell and F. J. Galtes, as trustees, and dated the 8th day of April, 1915, be decreed null and void and of no effect, and that it further be decreed that said J. K. Russell and F. J. Galtes be required to reconvey said property to this complainant, and that in case they refuse so to do, that the Court appoint a commissioner who shall make such conveyance.

3. That your complainant may have such other or further relief as equity may require.

4. May its please Your Honors to grant your complainant a writ of subpoena directed to the defendants, National Bank of Bakersfield, J. K. Russell and F. J. Galtes and commanding each of them at a certain time under a certain penalty to appear before Your Honors, in this Court, then and there to answer unto this Bill of Complaint, and to abide by and perform such decree as the Court may make in the premises.

WM. H. MOORE, JR.,
As Trustee of the Estate of Alfred W. Bannister, Bankrupt.
LUCIUS K. CHASE,
ERNEST U. SCHROETER,
Attorneys for Complainant.

State of California,
County of Los Angeles,—ss.

William H. Moore, Jr., the complainant in the foregoing bill named, being duly sworn, says that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes them to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 15th day of July, 1915.

[Seal] M. LUCILE ADAMS,
Notary Public in and for the County of Los Angeles, State of California.

"EXHIBIT A."

THIS DEED OF TRUST, made this 8th day of April, 1915, by and between A. W. Bannister of Bakersfield, in the County of Kern, State of California, the party of the first part, and J. K. Russell and F. J. Caltes, the parties of the second part, and The National Bank of Bakersfield, a corporation duly incorporated, organized and existing under the laws of the United States, the party of the third part, Witnesseth:

Whereas, the said party of the first part has borrowed and received of the said party of the third part the sum of ten thousand and no/100 dollars, and has agreed to repay the same, with interest, in gold coin of the United States, according to the terms of certain promissory notes executed by the said party of the first part to the said party of the third part;

Now This Indenture Witnesseth: That the said party of the first part, in consideration of the aforesaid indebtedness and of the sum of one dollar to him in hand paid by the said parties of the second part (the receipt whereof is hereby acknowledged), and for the purpose of securing the payment of the indebtedness evidenced by said promissory note, with interest as therein provided, and of any sum or sums of money with interest thereon that may be paid, expended or advanced by, or that may otherwise be or become due or payable to, the said parties of the second part, or the said party of the third part, under the provisions of this instrument, and also as security for the repayment of such additional sums, with interest thereon, as may be hereafter borrowed or received by the said party of the first part from the said party of the third part and evidenced by another promissory note or other promissory notes executed and delivered by said party of the first part to the said party of the third part, does by these presents grant, bargain, sell, convey and confirm unto the said parties of the second part, as joint tenants and in joint tenancy, and to the survivor of them, all that certain real property situate in the County of Kern, State of California, described as follows:

The south half of the southeast quarter of the southeast quarter of section 35, township 11, north range 23 west, S. B. and M.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and

reversions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold the same unto the said parties of the second part, as joint tenants, and the survivor of them and to their successors and assigns, upon the trusts herein expressed:

First. During the continuance of these trusts the parties of the second part, or the survivor of them, and the said party of the third part, their successors and assigns, are hereby authorized to pay without previous notice all or any taxes, assessments, liens or incumbrances now subsisting or that may hereafter exist upon said premises, which may in their judgment affect said premises or these trust; and they may in their discretion, at the expense of the said party of the first part, contest the payment of any such liens or incumbrances, or may defend any suit or proceeding that they may consider proper to protect the title to said premises and also to keep at their option the buildings now erected or which may hereafter be erected on said premises insured against loss by fire in the sum of.....dollars or less, in their discretion, loss, if any, payable, to the said party of the third part; and these trusts shall be and continue as security to the said party of the third part and the said parties of the second part or the survivor of them, and their assigns, for the repayment in gold coin of the United States of the indebtedness evidenced by said promissory note, with interest as therein provided; also as security for the repayment of any sum or sums of money, with interest thereon that may be paid, expended or advanced by, or that other-

wise may be or become due or payable to, the said parties of the second part or the said party of the third part, under the provisions of this instrument; also as security for the repayment of such additional sums, with interest thereon, as may be hereafter borrowed and received by the said party of the first part or either of *the* from the said party of the third part as evidenced by any other promissory note or notes executed by said part.. of the first part or either of them to the said party of the third part; also as security for the repayment of all amounts paid out as aforesaid and costs and expenses incurred as aforesaid, whether by said parties of the second part or said party of the third part, together with the reasonable expenses of these trusts, including, in case of a demand for sale, the compensation of the said parties of the second part, as trustees, hereinafter mentioned, with interest on all such sums and payments at the rate of one per cent per month until final repayment; and the said party of the first part hereby agrees to repay immediately all of said sums and payments, without demand, and also interest thereon at the rate of one per cent per month until fully repaid.

Second. In case the said party of the first part shall well and truly pay or cause to be paid at maturity, in gold coin as aforesaid, all sums of money so *borrowe* as aforesaid, and the interest thereon, and shall upon demand repay all other moneys secured or intended to be secured hereby and also the reasonable expenses of this trust, then the said parties of the second part, the survivor of them, their successors or assigns, shall re-

convey all estate in the premises aforesaid to the said party of the first part, at his request and cost.

Third. If default be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursement of any amount herein provided to be paid, or of any interest thereon, then the said parties of the second part, the survivor of them and their or his successors or assigns on demand of said party of the third part, or its assigns, shall sell the above granted premises or such part thereof as in their discretion they shall find it necessary to sell, in order to accomplish the object of these trusts, in the manner following, namely: They shall first publish notice of the time and place of such sale, with a description of the property to be sold, at least once a week for three weeks in some newspaper published in said County of Kern, and may from time to time postpone such sale by publication in the same newspaper, or, at their option, by public announcement thereof at the time and place of sale so advertised, and on the day of sale so advertised or on the day to which such sale may be postponed may sell the property so advertised, or any portion thereof, at public auction, in the said County of Kern, to the highest cash bidder; and the holder or holders of said promissory note, their agents or assigns, the said party of the third part, or any other person may bid and purchase at such sale.

And the said parties of the second part, or the survivor of them or their successors or assigns, shall establish as one of the conditions of such sale that all bids and payments for the said property shall be

made in gold coin of the United States, and, upon such sales they execute to the purchaser a deed of the premises so sold, and out of the proceeds thereof shall pay:

Firstly. The expenses of such sale, together with the reasonable expense of this trust, including the compensation of the said parties of the second part as trustee hereunder in the sum of one hundred sixty and no/100 dollars, and in the sum of two hundred fifty and no/100 dollars, as compensation for such attorney as the said trustees may employ in carrying out the purposes of the trusts herein expressed, all in gold coin of the United States, which said amounts shall become due upon any default made by the said party of the first part in any of the payments aforesaid; and also such sum, if any, as said parties of the second part or said parties of the second part, or said party of the third part, shall have paid for procuring an abstract of or search of the title to said premises subsequent to the execution of this deed of trust.

Secondly. All sums which may have been paid by the said parties of the second part or said party of the third part, their successors or assigns, or the holders of the note aforesaid, and not repaid and which may then be due whether paid on account of incumbrances or interest of insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon.

Thirdly. The amount due and unpaid on said promissory note, with whatever interest may have accrued thereon.

Fourthly. Any additional sums, with interest thereon, that may be hereafter borrowed and received by said party of the first part or either of them from the said party of the third part and evidenced by another promissory note or notes; and

Lastly. The balance or surplus of such proceeds, if any, to the said party of the first part, his heirs or assigns.

And in the event of a sale of said premises, or any part thereof, and the execution of a deed or deeds under these trusts, then the recitals therein of default and of publication of notice of sale, and of a demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and of any other fact or facts affecting the regularity or validity of such sale, shall be conclusive proof of such default, and of the due publication of such notice, and that the sale was made on due and proper demand, and all of the facts recited in said deed; and any such deed or deeds with such recitals therein shall be effectual and conclusive against the said party of the first part, his heirs, assigns and all other persons as to such default, publication and demand and as to all other facts recited therein; and the receipt for the purchase money contained in any deed executed to the purchaser as aforesaid shall be a sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money according to the trusts aforesaid or otherwise.

And in the event of such sale being made and such deed or deeds being executed by one of said trustees only, then the recitals in said deed or deeds of the

death, resignation or removal of the other of said trustees shall be effectual and conclusive proof of such death, resignation or removal, and any such deed or deeds with such recitals therein shall be effectual and conclusive against the said party of the first part, his heirs or assigns and all other persons as to such death, resignation or removal.

And in the event of such sale being made and such deed being executed by any person or persons as trustees other than the said trustees herein named then the recitals in such deed or deeds of the death, resignation or removal of any trustee or trustees herein named and the appointment of their successor or successors shall be conclusive proof of such death, resignation or removal and of the due and legal appointment of such successor or successors.

It is expressly covenanted that the party of the third part may from time to time appoint other trustees to execute the trusts hereby created; and, upon such appointment and a conveyance to them by the parties of the second part, the survivor of them, their successors or assigns, the new trustees shall be vested with the title, interests, powers, duties and trusts in the premises hereby vested in or conferred upon the parties of the second part. Such new trustees shall be considered the successors and assigns of the parties of the second part within the meaning hereof.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

ALFRED W. BANNISTER (Seal)

State of California,
County of Kern,—ss.

On this 8th day of April, A. D., 1915, before me C. H. Farney, a Notary Public in and for said county and state, personally appeared A. W. Bannister known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

Witness my hand and official seal, at my office in said county, the day and year in this certificate written.

(Seal) C. H. FRANEY,

Notary Public in and for said County and State.

Recorded at the request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., in Vol. 295 of Trust Deeds, page 328 Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

[Endorsed]: No. A 32. Equity. In the District Court of the United States of America in and for the Southern District of California, Northern Division. William H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, Complainant, vs. National Bank of Bakersfield, a corporation organized and existing under and by virtue of the laws of the United States, J. K. Russell and J. F. Galtes, Defendants. Bill of Complaint. Filed Jul. 15, 1915. Wm. M. Van Dyke, Clerk; by Chas. N. Williams, Deputy Clerk. E. U. Schroeter, Lucius K. Chase, Attorneys for Complainant, 443 Title Insurance Bldg., Los Angeles, Cal.

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Northern Division.

In Equity.

Subpoena.

The President of the United States of America, Greeting: To the National Bank of Bakersfield, a Corporation, J. K. Russell and J. F. Galtes.

You Are Hereby Commanded, That you be and appear in said District Court of the United States aforesaid, at the court room in Fresno California, on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Bill of Complaint exhibited against you in said Court by William H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, who is a citizen of the State of California, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, The Honorable BENJAMIN F. BLEDSOE, Judge of the District Court of the United States, this 15th day of July, in the year of our Lord one thousand nine hundred and fifteen and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE, Clerk.
By Chas. N. Williams, Deputy Clerk.

Memorandum Pursuant to Rule 12, of Rules of Practice for the Courts of Equity of the United States, Promulgated By the Supreme Court, November 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's office; otherwise the bill may be taken *pro confesso.*

WM. M. VAN DYKE, Clerk.
By Chas. N. Williams, Deputy Clerk.

United States Marshal's Office,
Southern District of California,—ss.

I Hereby Certify, that I received the within writ on the 15th day of July 15th, 1915, and personally served the same on the 16th day of July, 1915, on C. L. Claflin, Pres. Natl Bank of Bakersfield, F. J. Galtes & J. K. Russell, by delivering to and leaving with C. L. Claflin, President of Natl Bank of Bakersfield, F. J. Galtes and (J. K. Russell left with F. J. Galtes), said defendants named therein, personally, at the County of Kern, City of Bakersfield, in said district, a copy thereof.

Fresno, July 16th, 1915.

C. T. WALTON,
U. S. Marshal.
By S. J. Shannon,
Deputy.

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's office twenty days from the issuing thereof.

Subpoena issued July 15, 1915.

WM. M. VAN DYKE, Clerk.
By Chas. N. Williams,
Deputy Clerk.

Received 4-40 p. m., Jul. 15, 1915. U. S. Marshal's office, Los Angeles, Cal.

[Endorsed]: Marshal's Civil Docket No. 2721. No. A 32 Equity. U. S. District Court, Southern District of California, Northern Division. In Equity. Wm. H. Moore, Jr., etc., vs. National Bank of Bakersfield, et al. Subpoena. Filed Jul. 23, 1915. Wm. M. Van Dyke, Clerk; by Chas. N. Williams, Deputy Clerk. Eq. R. B. 239.

In Equity. No. A 32.

In the District Court of the United States, in and for the Southern District of California, Northern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation Organized and Existing Under and By Virtue of the Laws of the United States; J. K. RUSSELL and J. F. GALTES,

Defendants.

Answer.

Come now the above named defendants and answering the Bill of Complaint filed herein by William H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, a bankrupt, deny that at the time of the execution, or at the time of the recordation, of the deed of trust referred to in complainant's bill, and set forth as "Exhibit A" thereto, the said Alfred W. Ban-

nister was insolvent, or that at the time of the execution or recordation of said instrument the said National Bank of Bakersfield had reasonable, or any, cause to believe that the transfer of the title to said property under said deed of trust to the defendants Russell and Galtes, as trustees, or otherwise, for the purpose of securing the payment of the promissory notes in said bill set forth, would effect a preference in its favor over other creditors of said bankrupt in the same class, or that the enforcement of the lien of said deed of trust, or that the recognition thereof as a valid transfer of said property in said deed of trust described, would enable the defendant, National Bank of Bakersfield, as a creditor of said bankrupt, Alfred W. Bannister, or otherwise, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendants deny that said deed of trust was executed by the said Bannister to the said defendants J. H. Russell and J. F. Galtes for the purpose, or with the intent, of defrauding the creditors of said Alfred W. Bannister.

Defendants deny that unless the relief prayed for in said Bill of Complaint be granted that the assets of said estate of said Alfred H. Bannister will be materially reduced by a large, or any, amount, or that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims the property in said bill described, or otherwise.

Wherefore defendants pray that complainant take nothing by his said bill, that the same be dismissed,

and that they have and recover their costs herein expended.

W. N. GOODWIN, and
HUNSAKER & BRITT,
Attorneys for Defendants.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Northern Division. William H. Moore, Jr., as Trustee, etc., Complainant, vs. National Bank of Bakersfield, et al., Defendants. Answer. Service of the within Answer is hereby admitted this 16th day of September, 1915. Lucius K. Chase, Ernest U. Schroeter, Attorneys for Complainant. Filed Sep. 16, 1915. Wm. M. Van Dyke, Clerk; by R. S. Zimmerman, Deputy Clerk. W. N. Goodwin, and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendants.

In Equity. No. A 32.

In the District Court of the United States in and for the Southern District of California, Southern Division.

WM. H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation, Organized and Existing Under and By Virtue of the Laws of the United States, J. K. RUSSELL and J. F. GALTES,
Defendants.

Decree in Equity.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That certain deed of trust bearing date April 8, 1915, and executed by Alfred W. Bannister, purporting to convey to J. K. Russell and J. F. Galtes, as Trustees for the National Bank of Bakersfield, a corporation, certain real property situated in the County of Kern, State of California, and particularly described as

The south half (S½) of the southeast quarter (SE¼) of section thirty-five (35), township 11 north, range 23 west, S. B. B. & M.,

which said deed of trust was recorded on April 23, 1915, in Volume 295 of Trust Deeds, at page 328 thereof, Kern County Records, constitutes a preference within the meaning of the United States Bankruptcy Act, and as such is hereby declared to be null and void and of no effect; and said J. K. Russell and J. F. Galtes are hereby ordered and directed to reconvey within thirty days from the entry of this decree said real property to Wm. H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt;

And that complainant have judgment against defendants for his costs herein, taxed at the sum of thirty-six 00/100 (36.00) dollars.

Dated July 17th, 1916.

OSCAR A. TRIPPET,
District Judge.

Decree entered and recorded July 17, 1916. Wm.

M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.

[Endorsed]: Original. In Equity. No. A 32. In the United States District Court, Southern District of California, Northern Division. Wm. H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, Complainant, vs. National Bank of Bakersfield, J. K. Russell and J. F. Galtes, Defendants. Decree in Equity. Filed July 17, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. 3 Eq. Jl. 40.

Whereupon, said Bill of Complaint, Subpoena, *ad* respondendum, Answer and Final Decree are hereto annexed, said Final Decree having been duly signed, filed and enrolled, pursuant to the practice of said District Court.

Attest, etc.

[Seal] WM. M. VAN DYKE,
Clerk.
By F. F. Green,
Deputy Clerk.

[Endorsed]: No. A 32 Eq. In the District Court of the United States for the Southern District of California, Northern Division. Wm. H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield. Enrolled papers. Filed July 20, 1916. Wm. M. Van Dyke, Clerk. By F. F. Green, Deputy Clerk. Recorded Eq. Jl. Book No. 3, page 40.

MOORE, Trustee,

vs.

NATIONAL BANK OF BAKERSFIELD.

Opinion of Court.

I shall not attempt in my decision in this case to state the facts nor the reasons for my decision, nor cite the law. The parties to the litigation know full well what the facts are, and all the authorities upon which I rely were cited in the argument.

First: The trust deed made by the bankrupt dated April 8, 1915, is void as being a preference.

Second: The chattel mortgage dated January 5, 1915, on an automobile and the chattel mortgage dated December 21, 1914, on a corrugated iron and frame warehouse building located on Southern Pacific Company's land at Wibel Orchard Siding, Kern County, California, are void because they were not recorded within a reasonable time and prior to forty days before the filing of the petition in bankruptcy and no possession was ever taken of said property.

Third: As to the so-called mortgages dated January 12, 1915, on 200 tons of grain and hay located at Bannister's Warehouse, Wibel Siding, Kern County, California, and January 12, 1915, on property at Bannister's Warehouse, corner of Main and D streets, Santa Fe Yards, Bakersfield, California. I am of the opinion that Bannister was a merchant; that the said property could not be mortgaged; that a recordation of said mortgages at any time would be have been futile; that they were valid between the parties as against creditors if possession had been taken under said alleged mort-

gages prior to the intervening of rights of third parties. That the petition in bankruptcy was filed May 6th, 1915. That no possession by the mortgagee of the said property was taken prior to that time. That the mortgagee never did take possession of said property. That the bankrupt continued in possession of said property and continued to conduct his previous business. That the payments made to the National Bank of Bakersfield after Apr. 23rd, 1915, were in the nature of unlawful preferences, and void.

Fourth: The claim made by the defendant that it had an equitable lien upon the property involved in the action is not well taken for the reasons:

That the alleged agreement to give a chattel mortgage upon said property was invalid because no chattel mortgage could be given on the same.

That the equitable lien was not valid because the defendant did not go into possession of the goods.

That the claim is not well made because there is a confusion of goods.

Fifth: I think this case falls within Section 60-a of the Bankrupt Act and the plaintiff is entitled to a ~~judgment~~ decree setting aside the alleged transfers and to recover the property.

[Endorsed]: No. B 94 Eq. S. D. A 32 Eq. N. D. U. S. District Court, Southern District of California. Wm. H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield. Opinion of Court. Filed Jun. 19, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.

In the District Court of the United States, for the Southern District of California, Southern Division. Hon. Oscar A. Trippet, District Judge.

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,

Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

Statement of the Evidence in Conformity with Equity Rule No. 75.

Stipulated that the two cases above entitled be tried at the same time and when submitted to the Court such evidence only as may be material, relevant or competent to the respective cases shall be considered by the Court in reaching a decision; also stipulated, with the approval of the Court, that all adverse rulings be deemed excepted to. Pursuant to stipulation and rule 50, the Court appointed a reporter, whose fees for reporting these cases and transcribing the testimony are to be taxed ultimately as costs.

Testimony of Alfred W. Bannister, for Plaintiff.

ALFRED W. BANNISTER, sworn as a witness on behalf of plaintiff, testified as follows:

I am the bankrupt for whose estate the plaintiff is

(Testimony of Alfred W. Bannister.)

trustee, and have resided in Southern California, including Los Angeles and Bakersfield, twenty-one years. For more than two years last past I have been engaged in the hay and grain business, buying and selling at retail and wholesale, and was so engaged during the year 1915. The form of bill head used during that time was as follows (Plaintiff's Exhibit 1):

"Terms Spot Cash . Los Angeles office with
D. P. Flory Co.

A. W. BANNISTER
Hay and Grain Merchant

Warehouse Bakersfield, Cal."
Santa Fe yards

My letter head also has the same phraseology at the top. I was in Los Angeles about April 1, 1915—presumably Mr. Smith, secretary of the Los Angeles Hay Storage Co., sent for me to come down. When I came down I went to the warehouse of the Los Angeles Hay Storage Co. and saw Mr. Smith there. On February 17th of this year I testified before the Referee in Bankruptcy in a controversy between the Security National Bank of Los Angeles and the Los Angeles Hay Storage Company, at which time I testified as follows:

"On or about April 1, 1915, the Los Angeles Hay Storage Co. was indebted to me as an individual to the amount of about $17,000. Sometime during the fore part of April, when I received a call from Mr. Smith of that company, I came down to Los Angeles from Bakersfield as soon as I could make business arrangements. I went to the office of the company on Macy street, where I talked to Mr. Smith a few minutes

(Testimony of Alfred W. Bannister.)

about the condition of affairs and he suggested that I call on Mr. Flory. Prior to that time I had known over the phone and probably by letter that Flory had been consulted concerning the financial condition of the Los Angeles Hay Storage Co. Smith and I went to Flory's office and had a conference with him and Mr. Mead, at which we talked of things in general and the condition of the company. Mr. Flory said he thought the easiest way out of the difficulty was for the company to go into bankruptcy immediately, to which I objected very strongly and thought the affairs of the company could be fixed up. Then Mr. Flory began to formulate a plan he had talked over with Mr. Smith, by which Flory was to take over the management of the concern himself. There was nothing definite as to that arrangement, and after talking with Mr. Mead a little bit, Mead went down to see Mr. Zombro of the Security Bank. I told Mr. Mead in his office that I did not care to put the thing through bankruptcy and that we might find some means where we could work it out. Previous to that Mr. Flory had said that if I would waive my claim of $17,000 we might be able to save the company."

I was down here around the 1st of April, prior to April 6th. I received a letter from Mr. Flory about April 7, 1915. At that time I was doing business with the defendant bank every day and was in the bank practically every day. I do not think I called their attention to this letter, as it was none of their business. At that time the bank held four chattel mortgages securing something like $10,500.00 indebtedness of mine

(Testimony of Alfred W. Bannister.)

to them, which chattel mortgages were unrecorded. I did banking business with them every day, but did not necessarily report my affairs to them. I think I returned to Bakersfield immediately after my interview with Mr. Flory about April 1st. I couldn't state when I next saw Mr. Russell, the cashier of the defendant bank, but if I had any banking business I went to the bank that day. I don't think I then explained to Mr. Russell what had taken place in Los Angeles. I returned to Los Angeles in about three weeks, I think, after April 6th.

At the first meeting of my creditors I testified before the Referee in Bankruptcy as follows:

"I have been in the habit of transacting my business with the National Bank of Bakersfield through J. K. Russell. I used to see him every day, but I didn't see him on April 23, 1915, for I believe I was down at Los Angeles at that time. We had made arrangements to put somebody in as manager of the Los Angeles Hay Storage Co., and then Mr. Wells went and attached my house.

Q. After your home was attached, what did you say to Mr. Russell?

A. Well, I don't know. I didn't tell him anything in particular. I told him that they had attached my home here; and by that time the board of directors had been around and I had given them a whole lot of information.

Q. What did you say to them on or about that time about the chattel mortgages that you had given before that time?

(Testimony of Alfred W. Bannister.)

A. I didn't tell them anything in particular.

Q. What did they say to you about it?

A. They said that we should file them, put them on record.

Q. Did you communicate with him by telephone?

A. No, I don't think so.

Q. From Los Angeles?

A. No, I don't think so.

Q. Did you write him and tell him that you were attached?

A. No, my wife wrote me and she told me that the home was attached, and I got ready, and probably went into the bank to see him or telephoned him that I had to go to Los Angeles right away.

Q. And that your home had been attached?

A. That my home had been attached, yes.

Q. Was that on the 23rd or the day before

A. Oh, I could not tell; it was around there, about that time.

Q. But when you had received this letter from your wife, you then went to the bank and explained the situation to them?

A. Yes, sir.

Q. Do you know what you said, and what they said?

A. No.

Q. You don't remember?

A. Only that they were going to put all that stuff that I had given them on record.

Q. Did you know at that time that the bank had not recorded the chattel mortgage?

(Testimony of Alfred W. Bannister.)

to them, which chattel mortgages were unrecorded. I did banking business with them every day, but did not necessarily report my affairs to them. I think I returned to Bakersfield immediately after my interview with Mr. Flory about April 1st. I couldn't state when I next saw Mr. Russell, the cashier of the defendant bank, but if I had any banking business I went to the bank that day. I don't think I then explained to Mr. Russell what had taken place in Los Angeles. I returned to Los Angeles in about three weeks, I think, after April 6th.

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(Testimony of Alfred W. Bannister.)

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A. That my home had been attached, yes.

Q. Was that on the 23rd or the day before

A. Oh, I could not tell; it was around there, about that time.

Q. But when you had received this letter from your wife, you then went to the bank and explained the situation to them?

A. Yes, sir.

Q. Do you know what you said, and what they said?

A. No.

Q. You don't remember?

A. Only that they were going to put all that stuff that I had given them on record.

Q. Did you know at that time that the bank had not recorded the chattel mortgage?

(Testimony of Alfred W. Bannister.)

A. They were certainly not. Now, then, in the fifteen years I have been in Bakersfield, I go to the bank at any time and got three or four or five thousand dollars. I would say, I have got twenty-eight or thirty mules—and I would say do you want a chattel mortgage on the mules, or a trust deed on my real estate—anything that you want, you can have. And they would hold that and never put that on record. They have not had to. I have always lived up to my obligations, and there has not been any necessity at all for them to think about protecting the money that I had borrowed from them, personally.

Q. And it has always been your understanding that if anything was to happen—

A. They were to put them on record if anything happened, for stock in trade, corn, hay, barley, real estate, wagons, all my personal property.

Q. That has been your general understanding during all this period?

A. It has always been during fifteen years.

Q. And with reference to these particular mortgages, you had this same understanding?

A. The same understanding; we always had that.

Q. That they were not to be put on record?

A. It was up to the bank to do it any moment, to put them on record if they thought that they were not fully protected—it was up to the bank to do it.

Q. On the 8th day of April, 1915, you were owing the bank somewhere in the neighborhood of ten thousand dollars?

A. Yes, sir, I think so.

(Testimony of Alfred W. Bannister.)

Q. And did you voluntarily go to the bank on that day and make them a deed of trust?

A. I went voluntarily to them and told them that they should have what protection I could give them.

Q. Did you tell them at that time that you were having trouble with your creditors?

A. No, I had no trouble with my creditors up there.

Q. Did you explain to them that the Los Angeles Hay Storage Company was having trouble?

A. They owed me seventeen thousand dollars and could not get the money to pay me.

Q. Did you explain to them that the Hay Storage Company was having trouble with its creditors?

A. Yes—

Q. What else did you say?

A. Conversations were taking place every day; I cannot recall.

Q. Did you explain to them that you were a heavy stockholder of the Hay Storage Company, and as such were liable to the creditors?

A. They knew that I had stock.

Q. And they knew that under the statute you were liable?

A. I suppose they knew. I don't know that I made a definite statement as to that.

Q. Did they know that you owned stock in the Los Angeles Hay Storage Company?

A. Yes, sir.

Q. Did they know that you owned 299 shares of that stock?

(Testimony of Alfred W. Bannister.)

A. I don't know that they knew the number of shares.

Q. Did they know that you owned the majority of the stock of the Hay Storage Company?

A. No, I don't think so.

Q. Did they ever ask you how many shares of stock you owned?

A. No.

Q. They simply knew that the Hay Storage Company was in trouble down here with its creditors and that you were a heavy stockholder in that concern?

A. Yes, sir.

Q. And that you were the president of the company?

A. Oh, Yes.

Q. And that you were one of the board of directors?

A. Yes, sir.

Q. And that in case you should have to pay your pro rate of the obligations of the Hay Storage Company, you were insolvent?

Mr. NOLAN.—I think that is calling for the conclusion of the witness.

The REFEREE.—I don't see why you don't let him tell some of the facts in this case. You are putting words into his mouth a good deal. Let him tell the facts. He is perfectly willing to tell.

The WITNESS.—I will tell you everything that you ask me.

The REFEREE.—Let the witness do the testifying.

Q. What was said by you to the bank officials in

(Testimony of Alfred W. Bannister.)

reference to your insolvency at that time, on the eighth day of April?

A. About that time I talked to Mr. Zombro down here and to Mr. Newby, and I told them that I could get through and meet all my obligations in Bakersfield, if I was left alone. And I told them at the National Bank of Bakersfield that I could, but they forced me into involuntary bankruptcy, and there was no help for it at all. And I related the conversation to the bank there as to the solvency; at the time, I could have paid all my liabilities—every one of them.

Q. Could you have paid your portion of the indebtedness of the Hay Storage Company?

A. Well, they owed me seventeen thousand dollars, you understand, and I don't know that I owed them anything.

Q. I am speaking of the creditors of the Hay Storage Company.

A. Well, there was seventeen thousand dollars to be divided among them.

Q. You know, as a matter of fact, Mr. Bannister, that you were liable to each of the creditors of the Hay Storage Company for your pro rata of the indebtedness?

A. Well, yes, it is a corporation matter?

The REFEREE.—Yes.

A. Yes, that is the way I understood it, and the others were also liable for a share of the debts of the corporation.

Q. You understood that you were liable for 299 shares—you had 299 shares, hadn't you?

(Testimony of Alfred W. Bannister.)

A. Yes, sir.

Q. What I want to know is whether you explained those things to the bank at Bakersfield?

A. I didn't know at that time that there was any stockholders' liability; that I would be cinched to that extent. I didn't know enough about corporation matters to know that I would be liable under the stockholders' liability, excepting as I understood it from Mr. Mead and Mr. Zombro, not to the creditors, I understood that it was to the bank; that is the only liability that I thought I had.

Q. By The REFEREE.—That you had endorsed?

A. Yes, and not to the whole of the creditors of the company.

Q. By The REFEREE.—When you were talking to the bank at Bakersfield, you were talking about your indebtedness on which you were a maker or endorser?

A. Yes, sir.

Q. By The REFEREE.—And you didn't mention any other?

A. No, I didn't mention any other creditors down there.

Q. By The REFEREE.—But you did tell those people at Bakersfield when you went there, at the time that you put on the mortgage, that the attachment had been run against your property?

A. Against my home, and I had been out of my way to explain it to Mr. Zombro and Mr. Mead and also Mr. Newby, too. We put it in the notes, to have a manager appointed to carry all the matters out, and

(Testimony of Alfred W. Bannister.)

I waived all claim to my money for twelve months, provided all of the creditors didn't do anything with the accounts for six months; and then begin paying on the indebtedness. But in the meantime use that money for buying and selling and making a profit by which each of the creditors could be paid. There was within eight or nine hundred of it all signed up, and Mr. Wells goes and attaches my home, and the whole thing went into bankruptcy. And I had come down, and that was the understanding when I left here that all of those creditors were signing up.

Q. By The REFEREE.—Did you go back and tell the bank that?

A. I believe I did. I told them that everything was satisfactory. I explained what had taken place down here, and that the thing was going through very well, I mean, not so badly with the Hay Storage Company, and that we might get through, and we could get out fifty per cent any way, and pay up the creditors in full.

Q. By The REFEREE.—And you went back and told those facts to the bank at Bakersfield?

A. Yes, and that we were going to do that.

Q. By The REFEREE.—And right after you told them that, and that this attachment had been run, they put their chattel mortgages on record?

A. Yes, they had them, and they put them on record when my home was attached, that is the time.

Q. By The REFEREE.—Did they come over to see you, or did you go to the bank?

A. I went to the bank.

(Testimony of Alfred W. Bannister.)

Q. By The REFEREE.—Just as soon as you were attached you went to the bank?

A. Yes, or telephoned—probably I went up there.

Q. By The REFEREE.—They hadn't sent for you?

A. No, I am in the bank every day.

Q. By The REFEREE.—They didn't send for you?

A. No, I don't think so. No, they didn't send for me.

I don't remember what Mr. Russell said at the time I gave the bank the trust deed of April 8, 1915. I remember telling him that I had twenty acres of land on the San Amelia Range, and if he wanted he could have a trust deed. I spoke about giving the security myself personally on that twenty acres of land on my personal obligations. I was protecting them. If you had been my personal creditor I would have protected you in the same manner. I don't know when I had last given the bank a statement of my assets and liabilities. I took him down a warehouse receipt, showed him that there was lots of corn and also showed him the hay that was on hand. At another time I took him a trial balance, showing book accounts and everything, all my assets and liabilities. My stock in the Los Angeles Hay Storage Co. I carried as personal property. I haven't a copy of that statement now. I have done business with the banks up there for fifteen years and they have taken my word for what I have told them. The Los Angeles Hay Storage Co. is a corporation and my business at Bakersfield is personal. If I personally borrow $500 I am not going to give it to a corporation when I know that I owe it to you per-

(Testimony of Alfred W. Bannister.)

sonally. I have met my obligations with my creditors in Bakersfield, but down here the accounts have run since 1912. I have never had anything to do with the running of this company only to pour money into it. I thought they were going to try to make the company a success. Since the involuntary petition in bankruptcy has been filed I have paid accounts just as I had money coming in of the farmers I bought from. The Bakersfield bank had mortgages on my stock and they took it and sold it. There was nothing that I could do. They took possession about the beginning of May sometime.

Q. Now, did they take possession subsequent to the 5th of May?

A. Just about that time.

Q. Do you know whether it was on the 5th of May or before?

A. No, I don't know.

I don't know what I said to the bank about their taking possession under these mortgages. In all probability I told the bank that I was not going to make it go down here with the trustee proposition. I don't recollect the conversation at all. They told me they were going to sell all that stuff and they took possession of it and had somebody in possession all the time, reporting every sale that was made, every dollar that was sold. They had the list made out each day. It was out of my hands entirely. Every shipment on the railroad, and every car load sent there, the bank held the records for. They put a man in possession immediately after the conversation. I expect they received something like $8500 from the sale of the property. I

(Testimony of Alfred W. Bannister.)

was not in financial difficulties—the Los Angeles Hay Storage Co. was and they put me through bankruptcy. I told the bank what the trustees had agreed upon down here and I told them that things were going on very nicely. As the bank received the money from the sale of the mortgaged property I would get credit on my books in order to keep them straight. The bank notified me at different times that they received so much money from the sale of the goods and that they cancelled my obligations to that extent and I have credited it up to bills payable. And when I prepared my schedule in bankruptcy I still owed them something like $1200 or $1300. When the petition in bankruptcy was filed May 5th I owed the Bank of Bakersfield about $10,000.00.

By The REFEREE.—So that really they collected all that money from their security between the date of the filing of the petition and the date that you filed your schedule?

A. Yes, I guess that is so.

Prior to April 27th or 28th I owned lots 69 and 70, tract 1658, Los Angeles County. I conveyed this property to one D. Hansen, one of my creditors, somewhere about April 27th or 28th, around the time that my home was attached. I had the deed returned to me at Bakersfield and never delivered it to Mr. Hansen."

The COURT.—(Referring to all the foregoing testimony.) Did you so testify?

A. Yes, sir.

Q. That is the truth as you stated it there?

A. Yes, sir.

(Testimony of Alfred W. Bannister.)

Mr. JANEWAY.—I move to strike out all this testimony on the ground that it has not been connected up with the defendant in this case and is entirely immaterial; and this line of interrogation, if it shows anything, shows that the counsel at the time the interrogation was taking place put the answers into the witness' mouth to such an extent that even the Referee protested against his action; and, furthermore, the answers show that if he said anything to the bank at Bakersfield about it, he told them everything down here was proceeding satisfactorily; and, furthermore, there is no definite date fixed by the answers when he told the bank at Bakersfield about these conversations in Los Angeles, and there is some testimony there indicating that the conversations he had with Mr. Russell were subsequent to the 23rd of April, when the mortgages were recorded.

The COURT.—That would go to the weight of the testimony, Mr. Janeway, I think, and in this kind of a case you are entitled to ask leading questions and direct the witness' attention very particularly. The objection is overruled.

By Mr. CHASE.—It is proper at this time to add that the witness comes as an unwilling witness.

The COURT.—That don't make any difference.

(WITNESS, continuing.) Upon my return to Bakersfield after talking to Mr. Flory and Mr. Zombro, on April 1st, at Los Angeles, I didn't tell Mr. Russell the details of the conversations with those men, but I told him things were getting along satisfactorily down here. That was at the time Mr. Zombro, Mr.

(Testimony of Alfred W. Bannister.)

Newby and Mr. Mead were to act as trustees for the Los Angeles Hay Storage Co. I don't know that I told Russell they were to act as trustees or went into the details of it, but simply that things were going along very nicely at that time. At the time we had the interview at the Security National Bank in which Mr. Flory, Mr. Zombro, Mr. Mead, Mr. Smith and myself were present, there was a rough statement of the assets and liabilities of the Los Angeles Hay Storage Co. passed around. I didn't handle the paper and don't recollect the figures, but I saw them hand a paper to Mr. Zombro during the conversation. At that conversation of April 1st, Mr. Flory spoke of the condition of the company, and he had talked it over with Mr. Smith, and had concocted a plan by which he would take charge of the company as manager, with Mr. Zombro and Mr. Newby of the Pasadena Bank and Mr. Mead as trustees. My books showed that the company owed me $17,000, and the books of the company did not show that amount, but there were several carloads that had not been entered up to my credit. They wished me to waive my claim for a year and get the other creditors to waive their claims for six months, and all the moneys brought in were to go into the bank and be used to pay merchandise debts to run the business of the company without any further trouble from any of the creditors, and everybody would waive their claims for six months, and I was to waive mine for one year. If the thing did not go through satisfactorily, then I was to get my pro rata of the $17,000 as one of the creditors. Mr. Flory was quite satisfied that

(Testimony of Alfred W. Bannister.)

he could carry the thing through, and, if it was necessary, to put a little more money into it. He spoke to Mr. Zombro and Mr. Newby that day I think relative to getting a little more money to finance the concern and get it on a good footing. I did waive my claim in writing, and then the condition of the company was not bad. If I did not waive my claim the company was insolvent. But I didn't go through the books personally; I took Mr. Smith's and Mr. Flory's figures for it. I didn't know the exact amount. I think the liabilities, including my $17,000, exceeded the assets something like $25,000 or $28,000. When I returned to Bakersfield I did not undertake particularly to secure my creditors there, for I understood that the thing here was going along swimmingly. I don't recollect distinctly where or when was the first meeting I had with Mr. Russell after that. It must have been in the bank. But I did not tell him anything definite about the details of the business here; but I did tell him that things were going nicely down here. The conversation was sixteen or eighteen months ago. I have said that I stepped into the bank probably and made a deposit and he might have been busy and I simply said that things were going satisfactorily in Los Angeles and that is about the amount of the conversation. I don't think that I had theretofore told him that we were having trouble in Los Angeles, except that I couldn't get any money on my $17,000 claim. I had told him that they owed me a big amount, but I did not say what the amount was. I do not think he knew the approximate amount of it. I have no distinct recol-

(Testimony of Alfred W. Bannister.)

lection as to what occurred at the time I gave the trust deed on April 8th. I probably volunteered it. It was given for a debt that I already owed the bank. I don't recollect that I said anything particularly. I had that land clear and probably told Mr. Russell if he wanted to take a mortgage on it he could do so. I offered anything to the bank during the years that I did business with them. D. Hanson is a friend of mine, a mining man. On April 10, 1915, I wrote to him the following letter: (Plaintiff's Exhibit 2.)

"April 10, 1915.

D. Hanson, Esq.,
Dayton, Nev.
My dear Hanson:—

I have been down to Los Angeles to try and straighten matters out to some extent. They owe me personally $14,000.00 for hay and grain shipped from Bakersfield; the whole of this sum has been put in escrow for six months, on condition that the other creditors will not press suit. This will enable Mr. Flory, who has been appointed manager by the Pasadena National Bank, Security National Bank and Mr. Meade, who have been appointed trustees for the time being, or for at least one year, to adjust matters satisfactorily.

There is to be a creditor's meeting this afternoon in Los Angeles at three o'clock, but it is not necessary for me to be present as I have signed a waiver to my claim of $14,000, which if the creditors will not agree to our terms and will want to wind up the business of

(Testimony of Alfred W. Bannister.)

the Los Angeles Hay Storage immediately I will get my pro rata of the assets out of the settlement.

With this amount of money going out of my business here in Bakersfield it is keeping me jumping to pay my accounts, but I am getting along very nicely and have no fear of the ultimate outcome in Bakersfield if no complications arise in Los Angeles.

However I am still of the idea that I shall turn over the house to you, as it is the only available asset that I have free. It is necessary for me to let things rest for a week or so in order to enable things to quiet down because if this deed was put on record now, some of the creditors of the Los Angeles Hay Storage might think I was trying to dodge the issue of meeting my obligations, and this I am certainly not trying to do. ***"

On April 16, 1915, I sent the following letter to Mr. Syminton: (Plaintiff's Exhibit 3.)

"April 16

Mr. G. J. Syminton,
520 Douglas Bldg.,
Los Angeles, Cal.

My dear Sir:—

I enclose you herewith a copy of the letter received from Hanson which speaks for itself.

This was written after the interview which Hanson had with you, and according to his assertion you stated my Hollywood property was worth only $10,000.

I certainly take exception to this, as you cannot be intimate with the values of property during the last two years in the vicinity of my home. The property

(Testimony of Alfred W. Bannister.)

has a frontage of 120 feet by 185 feet deep, and with the amount of improvements I have put on it, cement sidewalks, cement walks around the house, cement basement, two story garage, etc., the whole value of the property is enhanced thereby, with the natural increase of the land values in the vicinity. There is no house similar to mine with a lot 60 by 185 feet, which would not bring $8,000 to $9,000, with a forced sale, and the improved lot adjoining (the tennis court) would certainly be worth $5,000 and A No. 1 value; in fact you cannot buy lots of this size around there for that amount.

Reversing my position: You might have a fair value set upon some of your property and I, without any actual knowledge of the increase in values or otherwise might make a misleading statement detrimental to your interests if any one should ask me as to the real values.

From the tone of Hanson's letter it would appear that I was trying to beat him. If I wished or had any desire to do that, I have the original note in my possession and he has absolutely no hold upon me in any way. When he left Bakersfield he was satisfied with the arrangement I had to protect him in case of anything happening through business entanglements of the Los Angeles Hay Storage Company, and now I receive this STINGER.

I am not going to squeal about my business trouble in Los Angeles, but sufficient to say that I am in the hole $14,000 of which I do not expect to see a cent. This is for hay and grain shipped from Bakersfield and

(Testimony of Alfred W. Bannister.)

owed to me personally by the Los Angeles Hay Storage Company.

I have to waive claim to this to try and help the creditors; I have kissed it goodbye, or more preferably kicked it goodbye.

It is most regrettable that Hanson should have written a letter like his to me and it hurts.

Yours very truly,"

Q. By Mr. CHASE.—Did the National Bank of Bakersfield know prior to April 23 that you had had any trouble with the Los Angeles Hay Storage Company?

A. I don't think they did. The thing had been going satisfactorily from the meeting we had with Mr. Flory early in April, and they were working on that thing here. Mr. Zombro and Mr. Newby and Mr. Mead were to act as trustees.

Q. Did you tell them that fact?

A. I don't recollect that I did.

Q. Are you certain that you did not?

A. No, I wouldn't be quite certain about it.

Q. You don't remember whether you told them about your trouble with the Hay Company or not?

A. I told them I couldn't get the money from them, and that I was waiving my account.

Q. You told the bank that you couldn't get any money from the Hay Storage Company?

A. I probably told them that sometime later on in April.

(Testimony of Alfred W. Bannister.)

Q. On what occasion did you tell them that?

A. I don't remember.

Q. Did you tell that to Mr. Claflin—that is the name of another officer of the bank?

A. Yes. I think he is the president. No; I didn't speak to Mr. Claflin.

Q. Your business was done entirely with Mr. Russell?

A. Yes.

Q. It was to Mr. Russell that you explained that you couldn't get your money out of the Los Angeles Hay Storage Company?

A. Yes.

Q. When was that, about? Was it before you went to Los Angeles on April 1st or afterwards?

A. I have no recollection of the date.

Q. Can you give me approximately the date?

A. Sometime in April, probably. I had been trying to get a little money out of them and I telephoned to Mr. Smith, and he always promised me to let me have some.

Q. Wasn't it after about April 8, at the time you gave this trust deed, that you had this conversation?

A. It was around about that time sometime.

Q. And it was on April 10th that you wrote to Desbro Hanson the letter in evidence? Was it before or after you wrote the letter to Hanson that you told Mr. Russell that you couldn't get your money out of the Los Angeles Hay Storage Company?

Mr. JANEWAY.—I object to that as assuming a condition of facts not shown to have existed. I have

(Testimony of Alfred W. Bannister.)

not understood that he told Russell that he couldn't get his money. I understood that he told him he was having some difficulty to get it, but that he would get it.

Mr. CHASE.—The record will show that he said to Mr. Russell that he could not get his money.

The COURT.—Overruled.

A. I don't recollect.

(WITNESS, continuing.) During January, February and March, 1915, I was conducting my business in Bakersfield on the corner of 14th and D streets, where I had a warehouse known as Bannister's Warehouse, and a half block containing ten or eleven lots in connection with the warehouse, and I also conducted business in a warehouse at Bannister Siding, twelve miles out of Bakersfield, and one on Wyble Siding out of Bakersfield.

(Witness produces two original mortgages, each dated January 12, 1915, executed by him to the defendant bank.) The goods mentioned in this mortgage executed by me to secure notes aggregating $10,500 were in the Wyble warehouse at that time and were all the goods that were then in that warehouse. The other property mentioned in the mortgage was approximately all in the Bannister warehouse on January 12th. There is a little stuff moving in and out of the warehouse all the time. I might make a shipment of a carload of stuff and there would be more coming in. It was approximately covered by this mortgage. Of course, I couldn't tell to a few sacks.

Q. By The COURT.—It was coming in and going out all the time?

(Testimony of Alfred W. Bannister.)

A. It was going in and out; yes.

(WITNESS, continuing.) The property referred to in this other mortgage—being 200 tons of grain and hay in Bannister's warehouse at Wyble Siding—was in that warehouse on January 12th. The goods mentioned in that mortgage and the 200 tons of grain and hay mentioned in the other mortgage of the same date included, I believe, all the property in those two warehouses. I had also a third warehouse. My business was conducted from the Bakersfield warehouse and I loaded hay out of the other warehouses by sending men down from Bakersfield. I conducted my principal business from the Bakersfield warehouse and there and at Wyble was where I had my stock in trade. I had just an ordinary office built into the warehouse in Bakersfield, with a desk and telephone.

(At this time the two mortgages above referred to were introduced and received in evidence as Plaintiff's Exhibits 4 and 5, being in the same form as Exhibit "A" attached to this statement and executed by Bannister in favor of the defendant, being under date of January 12, 1915, one describing Bannister as a "merchant" covering 200 tons of grain and hay located at Bannister's warehouse, Wyble Siding, Kern County, and given as security for his note for $1500.00 of the same date, which mortgage was recorded April 23, 1915; the other, being Plaintiff's Exhibit No. 4, the so-called "blanket" mortgage of the same date, between the same parties, in the same form, recorded April 23, 1915, covering certain personal property situated at

(Testimony of Alfred W. Bannister.)

Bannister's warehouse, corner 14th and D streets, Santa Fe yards, Bakersfield, as follows:

White Egypt corn	3345 sacks	410000″	$30.00	$6,000.00
Red " "	768 "	96000″	26.00	1,248.00
Feterita	315 "	37800″	26.00	491.40
R. Barley	750 "	57750″	28.00	808.50
Barley	145 "	14500″	26.00	188.50
Oats	385 "	30800″	28.00	431.20
Shelled corn	95 "	10000″	30.00	150.00
Wheat	74 "	10360″	30.00	155.40
Bale ties	975 bales		1.15	1,120.00
Alfalfa	1877 "	236150″	7.00	826.50
Grain hay	1134 "	140600″	8.00	562.40
Ear corn in crib		142200″	22.00	1,562.00

And certain property situate at Wyble warehouse as follows:

Red Egypt corn	1060 sacks	126700″	26.00	1,647.10
Barley hay	445 bales	52000″	8.00	208.00
		Total,		$15,399.00

and given as security for his promissory notes of the following dates and amounts: November 11, 1914, $2500.00; December 1, 1914, $1,000.00; December 9, 1914, $1500.00; December 21, 1914, $1500.00; January 4, 1915, $1500.00; January 5, 1915, $1,000.00; January 12, 1915, $1500.00.)

(WITNESS, continuing.) On December 21, 1914, I borrowed from the National Bank of Bakersfield $1500 with which to buy hay and corn from the Hein-

(Testimony of Alfred W. Bannister.)

rich, Randolph & Gully ranches, and gave that bank a note for that amount secured by a chattel mortgage, which has never been recorded, covering the produce I was buying from those ranches, and as additional security for the same loan at the same time—December 21, 1914—I gave them a chattel mortgage on the corrugated iron and frame warehouse building at Wyble Orchard Siding, which mortgage was recorded April 23, 1915.

(Stipulated that the Wyble Siding warehouse was a corrugated iron building erected on leased ground, by the terms of which lease the lessee could remove the building upon the termination of the lease.)

(At this time there was introduced and received in evidence as Plaintiff's Exhibit 6 said chattel mortgage dated December 21, 1914, recorded April 23, 1915, executed by Bannister, therein described as a "merchant," in favor of the defendant bank in the same form as Exhibit "A" attached to this statement, covering a corrugated iron and frame warehouse building located in the Southern Pacific Co.'s land siding at Wyble Orchard Siding, Kern County, California, as security for Bannister's promissory note in favor of defendant for $1500.00, dated December 21, 1914.)

(WITNESS, continuing.) The conversation at that time was that of an ordinary business transaction. I wanted the money to purchase these different lots of corn and I had the warehouse free and said they could have a mortgage on that if they wished it. That is about all the conversation we had about it. There was nothing said particularly about recording or not re-

(Testimony of Alfred W. Bannister.)

cording the mortgages. It was up to Mr. Russell at any time to record the mortgage if he wished to. That has always been the understanding with the banks ever since I have been in business—with the Bank of Bakersfield, the Security Trust Company and the National Bank of Bakersfield. It was understood that at any time they saw fit they could always secure themselves by recording these mortgages and putting them on record.

Q. Did you notify any of the creditors, Mr. Bannister, that you had given chattel mortgages to the National Bank of Bakersfield which had been withheld from record by that bank?

A. Not to my best knowledge.

Q. You don't remember that you ever notified any of them of that fact?

A. I don't think so.

Q. By The Court.—A while ago you said it was understood that these mortgages should be recorded. Do you mean to say by that that you and Russell talked it over and in that way you understand the conversation?

A. In doing business at Bakersfield—I wanted to get money to run my business at times and wished to buy hay and grain as the new crops came in, and I would just give them a chattel mortgage on all my personal property which they could hold in case of my death or anything. They could always record them. I have done that for seventeen years.

Q. But you say you had an understanding with

(Testimony of Alfred W. Bannister.)

Russell that he could record the mortgages that the bank had?

A. At his pleasure at any moment or at any time.

Q. Now, you say that that was an understanding, and you mean by the understanding that you and he had a conversation about that?

A. Yes.

The COURT.—Go ahead.

Mr. JANEWAY.—I would like to ask right there, if I may, if he will state what the conversation was.

Q. By The COURT.—State what the conversation was between you and Russell as nearly as you can about recording these mortgages. I think it has been in the record once. You need not state "what I said" and "what he said," but what the conversation was, as near as you can.

A. If I wanted a thousand or fifteen hundred dollars or two thousand dollars I stated what it would be for, and that the farmers would probably want so much money on the produce that I wished to buy. I would make a contract with the farmer and see what money he wanted and go to the bank and get what money was necessary to handle the stuff. It would be brought to the warehouses and sometimes it was mortgaged out in the field and a chattel mortgage taken, or as soon as it was delivered into the warehouse or warehouses.

Q. By Mr. CHASE.—That is hardly responsive to Your Honor's question, and I wish the reporter would read the question again.

Q. By The COURT.—Now, when you went to

(Testimony of Alfred W. Bannister.)

Russell to get money and gave the mortgage for it, what was said about the recording of the mortgage?

A. There was nothing definitely stated at any time. I must have told Mr. Russell that if he saw fit at any time to put the mortgages on record.

Q. By Mr. JANEWAY.—Did you tell him that?

A. I think so; yes. I must have told him so.

The COURT.—I think that answers the question. I think that is about all the witness knows about it, too.

By Mr. CHASE.—Was credit extended to you by sundry of your present creditors between January 12, 1915, and April 23, 1915?

Mr. JANEWAY.—Objected to as not within any issue presented by the pleadings. There is nothing alleged in the original complaint with respect to that and there was an amendment made by stipulation which recited certain conclusions of law respecting these creditors, and the objection to those conclusions was made by way of answer, and there were further objections to the amendment on the ground of uncertainty. They have never seen fit to amend and the objection has never been ruled on, though the answer to the amendments has been on file for two months. That is why I am objecting to this testimony as not responsive to the issues.

The amendment to which I refer is this: (Reading amendment.) We have objected to that amendment in the following manner by the answer to the bill and to the bill as thus amended. (Reading a portion of the answer.) And those objections have never been ruled on, and they point out specifically the objections we

(Testimony of Alfred W. Bannister.)

make to the allegations which are mere conclusions and not allegations of fact.

Mr. CHASE.—We have conceived that the objections are merely frivolous, and I think they are, and I am ready to present them along that line.

The COURT.—This should have been disposed of before the trial.

Mr. JANEWAY.—I don't think they are at all frivolous. We are entitled to know what the claims were.

The COURT.—The objections to the amendment will be overruled.

(WITNESS, continuing.) The schedule of my assets and liabilities which I signed and verified correctly sets forth the various items of indebtedness which I incurred between the 12th of January, 1915, and the 23rd of April, 1915, and the dates when incurred, and those items were all unpaid at the time this schedule was filed on June 2, 1915.

BANNISTER'S SCHEDULE IN BANKRUPTCY.

SCHEDULE A.

Preferred Creditors.

Vera E. Fitzpatrick, Bakersfield,	$ 150.00

Creditors Holding Securities.

Security Trust Co. of Bakersfield, note, $14,000.00, dated May 5, 1914, contracted individually, secured by mortgage covering lots 11 to 24, inclusive, block 359, City of Bakersfield, Kern County,	14,000.00

(Testimony of Alfred W. Bannister.)

National Bank of Bakersfield, note, $1300.00, dated December 21, 1914, contracted individually, secured by chattel mortgage dated January 5, 1915, on Stutz automobile, trust deed dated April 8, 1915, covering 20 acres of real estate, Kern County, and chattel mortgage dated December 21, 1914, on Wyble warehouse building, $ 1,300.00

Creditors Whose Claims Are Unsecured.

D. Hanson, Dayton, Nevada, promissory note dated November, 1913, contracted individually, 15,800.00

Frederick Ewens, address unknown, promissory note dated December 4, 1908, contracted individually in England, 970.00

Sarah Bannister, address unknown, loan $1,000.00, dated January 1, 1909, contracted individually at Bakersfield, 1,000.00

Eliza Bannister, address unknown, promissory note $727.93, dated February 4, 1908, promissory note $970, dated November 23, 1909, contracted individually in England, 1,697.93

Caroline A. Bannister, address unknown, loan $1,000.00, dated January 1, 1909, contracted individually at Bakersfield, 1,000.00

A. Diodati, Bakersfield, balance book account for hay incurred since Dec. 1, 1914, individually, at Bakersfield, 193.85

S. C. Smith Estate Co., Bakersfield, balance on book account for corn, incurred since January, 1915, individually, at Bakersfield 89.49

(Testimony of Alfred W. Bannister.)

E. B. Root, Wasco, Cal., balance book account for corn, incurred since December, 1914, individually at Bakersfield, 295.61

A. Agnetti, Bakersfield, balance on book account for hay and corn, incurred since January 2, 1915, individually, at Bakersfield, 1,091.26

C. E. Lieb, Bakersfield, balance on book account for hay, incurred since February, 1915, individually at Bakersfield, 312.40

R. H. Best, Bakersfield, balance book account, incurred since January, 1915, individually, at Bakersfield, 86.00

S. N. Sherzer, Bakersfield, loan, dated January 16, 1915, contracted individually, at Bakersfield, $ 900.00

Dr. A. S. Shafer, Bakersfield, loan dated January 21, 1915, contracted individually, at Bakersfield, 2,000.00

J. E. Mills, Bakersfield, balance book account for corn, incurred since December, 1914, individually, at Bakersfield, 370.25

W. S. Heck, Bakersfield, balance on book account for hay, incurred since January, 1915, individually, at Bakersfield, 501.45

Ernest Roberts, Bakersfield, balance book account for hay and corn, incurred since December, 1914, individually, at Bakersfield, 279.49

(Testimony of Alfred W. Bannister.)

F. M. Noriega, Bakersfield, balance on book account for hay, incurred since January, 1915, individually, at Bakersfield, 175.00

Pittsburg Steel Co., San Francisco, balance on book account for wire, incurred individually, February, 1915, 112.07

J. F. Pfost, Bakersfield, balance book account for grain, incurred since January, 1915, individually, at Bakersfield, 423.62

Northwestern Mutual Fire Ins. Co., Seattle, insurance on grain, incurred November, 1914, individually, at Bakersfield, 57.00

Henry Hoskings, Bakersfield, balance book account for hay, incurred since November, 1914, individually, at Bakersfield, 70.67

Hollywood National Bank, promissory note, April 5, 1913, contracted individually, at Hollywood, 2,500.00

Tony Silver, Bakersfield, balance on account of hay, incurred since November, 1914, individually, at Bakersfield, 116.18

H. Robinson, Bakersfield, balance on account of hay, incurred since November, 1914, individually, at Bakersfield, 137.00

W. Smith, Bakersfield, balance on account of hay, incurred since January, 1915, individually, at Bakersfield, 323.20

J. H. Hoskings, Bakersfield, balance on account of corn, incurred since February, 1915, individually, at Bakersfield, $ 172.60

Studebaker Garage, Bakersfield, for automo-

(Testimony of Alfred W. Bannister.)

bile supplies, incurred since February, 1915, individually, at Bakersfield, 105.67

C. R. Blodget, Bakersfield, balance on account of insurance, incurred January, 1915, individually, at Bakersfield, 8.35

W. E. Benz, Bakersfield, balance for corn, incurred since January, 1915, individually, at Bakersfield, 55.00

L. A. Hannon, Bakersfield, book account, for insurance, contracted individually, at Bakersfield, 58.90

U. S. Steel Products Co., San Francisco, for bale of ties, incurred February, 1915, individually at Bakersfield, 58.00

Kellogg Oil Co., Los Angeles, oil stock indebtedness, incurred in 1912, individually at Bakersfield, 169.17

Fairbanks-Morse Co., Los Angeles, galvanized iron, incurred February, 1915, individually, at Bakersfield, 54.06

Insurance Bureau, Auto Club of Southern California, Los Angeles, insurance incurred January, 1915, individually, at Bakersfield, 122.35

Total $46,756.57

SCHEDULE B.

Real Estate.

Lots 11 to 24, inclusive, block 359, Bakersfield, mortgaged to Security Trust Co. to secure payment of $14,000.00 $20,650.00

(Testimony of Alfred W. Bannister.)

Lot 17 and the west half of lot 16, re-sub, of Semi-tropic tract, Hollywood, homesteaded for $5,000.00	5,000.00
A portion of the southeast quarter of section 32, township 30 south, range 27 east, M. D. B. and M., Kern County, mortgaged to Security Trust Co. to secure payment of $14,000.00	3,050.00
Twenty acres in section 35, township 11 north, range 23 west, S. B. M., Kern County, covered by trust deed to National Bank of Bakersfield	$ 2,000.00
Cash on hand	49.93
Promissory note of M. F. Imhoff, dated January 7, 1914,	300.00
Promissory note of Cornelius Chapman, dated May 15, 1912,	450.00
Stock in trade consisting of grain, hay and mill stuffs in warehouse in Bakersfield and at Bannister switch	800.00
Household furniture and wearing apparel at Hollywood residence	1,500.00
Two horses at Bakersfield,	75.00
One wagon and hay rack at Bakersfield	35.00
One Stutz automobile, mortgaged to National Bank of Bakersfield,	1,000.00
One motorcycle at Bakersfield,	50.00
Warehouse equipment, consisting of trucks, canvas blocks, tackle, etc.	150.00
Office fixtures in Bakersfield warehouse,	

(Testimony of Alfred W. Bannister.)

consisting of desks, safe, chairs, typewriter, etc.	150.00
Open accounts on account of hay and grain business, Bakersfield,	4,834.76
299 shares of the capital stock L. A. Hay Storage Co., a corporation (the above company now in bankruptcy)	
$1,000.00 policy Mutual Life Insurance Co. of New York, surrender value	500.00
$4,000.00 policy, Bankers Life Insurance Co., surrender value,	1,000.00
Claim against L. A. Hay Storage Co. for hay and grain delivered and sold to said company	17,492.08
Deposit National Bank of Bakersfield	70.83
Total	$59,157.60

Property Claimed as Exempt.

Household furnishings, wearing apparel and books,	$ 1,500.00
Lot 17 and the west half of lot 16, re-sub of Semi-tropic Tract, Hollywood, homesteaded for	5,000.00
$1,000.00 policy Mutual Life Ins. Co. of New York surrender value	500.00
$4,000.00 policy Bankers Life Ins. Co., surrender value	1,000.00
Stutz automobile	1,000.00
	$ 9,000.00

(Testimony of Alfred W. Bannister.)

Exemption claimed under the laws of the State of California.

SUMMARY OF DEBTS AND ASSETS.

Wages	$ 150.00
Secured claims	15,300.00
Unsecured claims	32,070.53
Total Debts	$47,520.53
Real estate	30,700.00
Cash on hand	49.93
Promissory notes	750.00
Stock in trade	800.00
Household goods	1,500.00
Horses	75.00
Vehicles	1,085.00
Tools	150.00
Other personal property	150.00
Due on open accounts	4,834.76
Insurance policies	1,500.00
Unliquidated claims	17,492.08
Bank deposits	70.83
Exempt property	9,000.00
Total Assets	$69,157.60

The foregoing subscribed and sworn to by Bannister June 2, 1915.

(WITNESS, continuing.) I was in Bakersfield at the time that the property in Los Angeles was attached. My wife wrote me a letter about it. I came down to Los Angeles the next day probably.

(Testimony of Alfred W. Bannister.)

(Stipulated that Bannister's Hollywood home was attached by Wells April 21, 1915. Thereupon a copy of the writ was left with Mrs. Bannister.)

Q. Are you sure you had no talk with Mr. Russell on April 23?

A. I have no recollection of it.

Q. By The COURT.—Did you ever talk with him about that time?

A. Yes; about that time.

Q. What did you say to him? Did you tell him about financial difficulties down here?

A. No. At that time I had not talked to him about financial difficulties, because everything had been straightened out and affairs were going smoothly at that time around this date.

Q. Did you tell him about your house being attached?

A. I probably mentioned it to him, that I had to come to Los Angeles in a hurry.

Q. Do you know whether you spoke to him about it?

A. No; I don't recollect.

Q. You don't remember?

A. I can't remember.

Q. Did you talk to anybody else connected with the bank about that time?

A. No, sir.

By Mr. CHASE.—You were in possession of both these warehouses on April 23rd, were you not?

A. Yes.

Q. And you continued in possession of the ware-

(Testimony of Alfred W. Bannister.)

houses down to the date of the filing of the petition in bankruptcy, did you not?

A. What date was that?

Q. May 5, 1915.

A. Yes.

Q. And you continued to conduct the business of buying and selling hay subsequent to April 23, 1915, did you not?

A. Yes.

Q. And you continued to sell from these warehouses the property covered by these mortgages, did you not?

A. Yes.

(Stipulated that on May 5th, 1915, the petition in bankruptcy was filed in the matter of Alfred W. Bannister, bankrupt, and on May 24th, 1915, he was adjudicated a bankrupt.)

Q. Mr. Bannister, on April 23, 1915, what property did you own?

The COURT.—Hand him the schedule and let him tell from his schedule what property he owned on that date.

Mr. CHASE.—I don't care to ask the valuation that he puts on his property.

The COURT.—I want to know what property he owned. Let him go ahead and state the valuation, Mr. Chase, and then you can show its valuation if you want to. You won't be bound by his valuation.

(WITNESS, continuing.) On April 23, 1915, I owned the following property:

The Bannister warehouse property in Bakersfield, comprising lots 11 to 24, inclusive, block 359, which

(Testimony of Alfred W. Bannister.)

I valued at $20,650, which was encumbered by a mortgage for $14,000 in favor of the Security Trust Co.

My Hollywood home, which on April 23, 1915, regardless of the homestead, was probably worth between $10,000 and $12,000.

The warehouse at Bannister siding, consisting of practically two acres of land, with a corrugated iron warehouse, which property was also mortgaged to the Security Trust Co. of Bakersfield as security for the same $14,000 note.

Twenty acres in section 35, township 11 north, range 23 west, on the San Emidio range, covered by trust deed in favor of The National Bank of Bakersfield, as security for $10,000.

Household furniture and wearing apparel, $1500.

Stock in trade, consisting of grain, hay and mill stuff in the warehouses at Bannister and Bakersfield.

Two promissory notes for $300 and $450 respectively.

Two horses at Bakersfield, $75.00.

One wagon and hay rack at Bakersfield, $35.00.

One Stutz automobile, $1000, mortgaged to defendant bank to secure note for $1500.

One motorcycle $50.

Warehouse equipment, consisting of trucks, blocks, tackle, hammers, saws, cleaners, $150.

Office fixtures and warehouse at Bakersfield, consisting of desks, safe, chairs, typewriter and so forth, $150.

Open book accounts.

(Testimony of Alfred W. Bannister.)

299 shares of stock in the Los Angeles Hay Storage Co (Company now bankrupt.)

Life insurance.

Claim against Los Angeles Hay Storage Co., $17,492.

National Bank of Bakersfield, $70.00.

I had no other assets on April 23, 1915, than those set out in my schedule in bankruptcy, from which I have just been testifying; and my liabilities on that date are scheduled likewise. According to the schedule they aggregated $46,756.57, and the assets $59,157.60. I did not include in the schedule the liabilities a note owing on April 23, 1915, upon which I was then a guarantor payable to the Security National Bank of Los Angeles in the sum of $9,500.00, because that was an indebtedness of the Los Angeles Hay Storage Co. and I had nothing to do with it in my business at Bakersfield; nor did I include a note to William McCullough of $3413.37, which I owed him on April 23, 1915, on account of stock of the Los Angeles company. Also on that date I owed William C. Wells $1789.57 on note for the purchase of stock of the Los Angeles Hay Storage Co. I was also at that time guarantor on a note of Los Angeles Hay Storage Co. to a Pasadena bank for from $1000 to $1200. Said liabilities last above mentioned also existed on April 8, 1915. I owned on and prior to April 23, 1915, 299 shares of the stock of the Los Angeles Hay Storage Co., of which stock there was outstanding 500 shares, and I had been such stockholder for several years prior to 1915. The $9500.00 note signed by the Los

(Testimony of Alfred W. Bannister.)

Angeles Hay Storage Co. in favor of the Security National Bank was endorsed on the back in blank by me, my wife and Frank B. Smith and his wife, and was dated September 28, 1914. Only the sum of $150 has been paid on the principal of this note, and the balance is unpaid. I signed three notes, each dated February 24, 1914, payable to W. A. McCullough, two each in the sum of $1,000 and one in the sum of $1150. Nothing has been paid on these notes, principal or interest. The notes bear interest at the rate of seven per cent per annum from Feb. 24, 1914. These notes are not referred to in my schedule of liabilities. The Wells notes were sent to Mr. Wells and have not been paid.

(On

Cross-Examination,

the witness testified as follows:)

Frank V. Smith had the active management of the Los Angeles Hay Storage Co. I did not have any active management of it, and have never figured up what my stockholder's liability in that company was on any particular date. On neither April 8, or April 23, 1915, did I know the aggregate of that company's indebtedness. I first understood sometime in May or the middle of April, 1915, that by reason of holding stock in that company I became obligated for a certain portion of its indebtedness. I don't think I ever informed Mr. Russell or any other official of the defendant bank what my stockholder's liability was by reason of holding stock in that company. It was some time in April or May, probably in April, that I may

(Testimony of Alfred W. Bannister.)

have mentioned to Mr. Russell that I was under obligation to the banks down here for notes that I had endorsed; I understood I was obligated on the endorsements made to the banks; but otherwise I did not know that I was responsible for the general indebtedness of the company or any portion of it until around about May, because I then understood that I was going to be put through involuntary bankruptcy. I did not appear in court at the time I was adjudged a bankrupt. I had employed an attorney prior to that time, who was also the attorney for the Los Angeles Hay Storage Co., and I never knew for certain that he had not appeared for me in the proceedings. I now know that he did not appear for me in the proceedings only from what you say. I did not include in my schedule of liabilities the notes I had endorsed on behalf of the Los Angeles company or the notes given Wells and McCullough, because all of those concerned the affairs of the Los Angeles company, which I thought were taking care of themselves under the bankruptcy law, and I at all times kept my Bakersfield business segregated from the affairs of the Los Angeles Hay Storage Co. I considered the Bakersfield my personal business and knew very little about the management or what was being done in the Los Angeles concern, and I did not, and do not, know what my stockholder's liability in that concern amounted to.

(On additional

Direct Examination,

the witness testified as follows:)

In addition to the assets set forth in my schedule,

(Testimony of Alfred W. Bannister.)

I also owned on April 23, 1915, a good deal of the property covered by the chattel mortgages to the defendant bank, and a great deal of that was sold after April 23rd. The defendant bank took possession of that property and sold it and it was shipped in their name and the money went direct to the bank. I don't know whether I paid the bank any more money aside from what they got from that property. The bank shipped the stuff and billed it out, and in keeping my records correct they notified me when the money was turned in to them, and I gave them checks to cover these returns as they received them and they were entered in the pass book and the checks were given in that way. The defendant bank subsequent to May 4th put the money to my account which they derived from the sales of this property, and then I checked from that account and paid them various checks on account of this mortgage indebtedness. I issued all those checks to the defendant bank. The money represented by those checks which I gave them was already in the bank in the name of the bank as the proceeds of the sales of the various amounts of merchandise covered by those chattel mortgages. They told me when any of the proceeds came in and I gave them checks to cover them. I don't know whether these were all the checks given to the defendant bank.

(The checks in question were all signed by Bannister in favor of the defendant bank on the dates and for the amounts as follows):

(Testimony of Alfred W. Bannister.)

COMPLAINANT'S EXHIBIT No. 10.

May	6, 1915	$ 500.00
"	10, "	1,500.00
"	11, "	2,500.00
"	14, "	500.00
"	17, "	300.00
"	19, "	1,250.00
"	20, "	700.00
"	22, "	450.00

(WITNESS, continuing.) When I returned from Los Angeles, after going down there in connection with the attachment on my property, I found the bank were in possession down at the warehouse and that they had recorded all the sales of the stuff from the different warehouses. They were practically in possession of all the property.

Q. Now, you were selling goods during the months of January, February and March in the ordinary course of business, I think you testified?

A. Yes.

Q. Did you make to the bank daily statements of the amounts of your sales during those months?

A. No.

Q. How often, if at all, did you notify the bank what you were doing in the way of making sales of the mortgaged property?

A. As merchandise came in and out all the time, I would sell a carload of stuff and sometimes draw a sight draft through the bank, and told them that that

(Testimony of Alfred W. Bannister.)

was on some grain and that the money would be in in a few days, and the checks would be paid.

Q. And that was the way you conducted business during January, February and March, 1915?

A. Yes, sir.

Q. And the bank knew that you were selling this stuff that was mortgaged?

A. I was handling the stuff all the time.

Q. They knew you were doing that in January, February and March, 1915?

A. Yes.

Q. And that you were doing it in the ordinary course of business?

A. Yes.

Q. What was the value of the mortgaged property on April 23, as near as you can get at it, Mr. Bannister, in trying to fix the amount of your assets?

Mr. JANEWAY.—Do you mean the property covered by the chattel mortgages?

Mr. CHASE.—The property covered by the chattel mortgages.

A. I don't know.

Q. Would you think that that property was sold by the bank at its fair market value?

A. Yes, selling it as they did.

Q. Now, they sold after Nov. 4, 1915, as alleged in the answer, $8800 worth of goods?

A. They sold a large quantity. I don't know the exact amount.

Q. Have you any way of determining how much they did sell?

(Testimony of Alfred W. Bannister.)

A. The books would show it.

Q. Which books?

A. You can see the different sales that were made and the date of the shipments made.

Q. Do your books show the shipments that were made by the bank after May 4, 1915?

A. The shipping receipts would show it.

Q. And did you conduct this business with the bank as you were doing on your own behalf prior to May 4?

A. Practically. I don't know whether there was a merchandise account with The National Bank of Bakersfield.

Q. Subsequent to May 4 did you manage the shipping of hay and grain that was mortgaged?

A. I managed it; yes.

Q. You managed all sales that were made?

A. There were one or two men there that in the ordinary course of business always had done so. If they made a sale in the warehouse they would bring it in to the office.

Q. Mr. Schroeter has handed me the ledger showing the account of The National Bank of Bakersfield from May 6, 1915. Is that a correct statement of moneys paid by you to The National Bank of Bakersfield?

Mr. JANEWAY.—It seems to me the checks would be the best evidence. They were all paid by checks.

The COURT.—I think the book would be receivable in evidence.

(Testimony of Alfred W. Bannister.)

A. The merchandise account opened with The National Bank of Bakersfield showing the different shipments made to different people out of the chattel mortgaged stuff—out of the merchandise there, the people that received the stuff, and here are the checks that were credited when they came back through the bank.

(The ledger account of the defendant bank, as shown in Bannister's ledger, was introduced and received in evidence, and is as follows:)

May	6	McNear	107	$984.75
"	"	"	"	891.39
"	"	"	"	823.18
"	"	"	"	933.31
"	7	"	"	876.48
"	"	East Side	"	83.08
"	"	" "	"	83.24
"	8	R & K	"	80.90
"	"	"	"	79.36
"	"	"	"	56.17
"	"	"	"	57.62
"	10	S. O. Co.	"	101.79
"	11	K. R. O. F. Calif.	111	132.50
"	12	S. O. Co.	"	112.32
"	"	"	"	111.15
"	"	Assd. S. Co.	"	551.29
"	"	Guernsey	"	349.15
May	10	McNear	108	$891.39
May	"	"	"	984.75
"	11	"	"	876.48
"	"	"	"	866.64
"	"	"	"	933.31
"	17	Russell K	112	750.00
"	19	Guernsey		337.30
"	"	"	"	349.15
"	"	"	"	315.00
"	"	"	"	310.65
"	"	Assd. Oil Co.		551.29
"	"	East Side	"	140.39
"	21	" "	114	22.03
"	22	Russell & Kirby	"	60.70
"	12	" "	118	31.77
"	25	" "	112	185.42
June	1	" "	114	500.00

(Testimony of Alfred W. Bannister.)

"	"	"		"	337.30	"	" Rebates—McNear 126 433.08
"	"	S. O. Co.		"	13.91		
"	14	Guernsey		"	315.00		
"	"	"		"	310.65		
"	10	R & K		115	75.20		
"	"	"		"	80.83		
"	"	"		"	87.39		
"	11	"		117	188.94		
"	12	"		"	79.38		
"	"	"		"	122.93		
May	12	R & K		117	$84.72		
"	21	S. O. Co.		"	13.96		
"	12	R & K		119	120.86		
"	"	"		"	52.04		
"	27	"		113	71.55		
"	29	McNear—rebate damaged corn		123	433.08		

(Testimony of Alfred W. Bannister.)

The COURT.—Isn't that all that was sold?

Q. By Mr. CHASE.—Is that all that was sold subsequent to April 23?

A. That was grain being received and hay being received and shipped out all the time, and the money was interchanging all the time in checks to the bank.

Q. By The COURT.—Have you any account in the bank?

A. I shipped out something like $3794 between April 1st and May 1st.

Q. I had not asked you, Mr. Bannister, as to what happened after you say that the bank took possession of this property on April 23.

Q. By Mr. JANEWAY.—Everything that was realized from the sale of the mortgaged property was paid to the bank and received by the bank and credited on these notes?

A. Yes.

Mr. CHASE.—After April 23?

Mr. JANEWAY.—At any time.

A. Yes.

Q. All proceeds of any sales of any part of the mortgaged chattels was received by the bank?

A. Oh, yes.

(WITNESS, continuing.) I don't think on April 23rd, or prior thereto, I filed with the County Recorder of Kern County any statement that I proposed transferring possession of my stock in trade to the defendant bank on or about April 23rd. I don't recollect that on that date I filed any kind of a statement with the County Recorder. The condition of my assets

(Testimony of Alfred W. Bannister.)

and liabilities was practically the same on April 8th as on April 23rd, 1915.

(On resuming

Cross-Examination,

witness testified as follows:)

I made payments to the defendant bank at various times between January and May, 1915. As I sold portions of the property covered by the chattel mortgages in favor of the bank I applied a part of the proceeds of those sales upon my indebtedness to the bank in Bakersfield. In other words, as I sold some portion of the property covered by those chattel mortgages I paid to the bank at least a part of the proceeds of those sales. With the balance I paid current bills. For instance, I handled a great deal of rolled barley, and that comes in and goes out every day a good many tons, and that is not on any record of the chattel mortgage and was not chattel mortgaged. That resulted in my acquiring other merchandise. I would pay a bill for the rolled barley with that money, and I would sell it and turn the money back to the bank, so that ultimately the bank got all the proceeds of the sales less the expenses thereof. Approximately somewhere around the end of April all the stuff was shipped in the name of The National Bank of Bakersfield, and the shipping receipts were issued in the name of the bank and were in my possession at the time the Trustee took possession of my books and papers.

The COURT.—Is it your idea that all this property covered by chattel mortgages was shipped in the name of the bank?

(Testimony of Alfred W. Bannister.)

A. Yes, after they took possession.

Q. What date did they take possession?

A. I have no distinct recollection. It was somewhere about the end of April or May, probably the latter end of April.

Q. Or first of May?

A. Yes.

(WITNESS, continuing.) Those checks that were given by me to the bank after they took possession were not given until the bank notified me that they had received the proceeds of those shipments. The bank got the proceeds direct and notified me that they had the money and asked me to give them a check covering it. It was entered in my deposit book and I immediately gave them checks right in the bank at the time. I did not understand that I could have drawn checks against the proceeds in the hands of the bank from these sales to pay any other person than the bank. In other words, it was simply a matter of keeping my books straight, the giving of these checks was, and I could not have used that money to pay someone else without the consent of the bank unless there was something came in that was sold again and was turned over to make a cash transaction of it. If I did use any of it I would use it to replace merchandise which would be covered to the bank. Referring to the property which I testified to on direct examination as owning on April 23, 1915, it included the Bannister warehouse at Bakersfield, encumbered by a mortgage for $14,000 to the Security Trust Co., which I consider to have been worth on April 23, 1915, about

(Testimony of Alfred W. Bannister.)

$20,000. It consisted of about half a block of land running along the Santa Fe railroad tracks for 264 feet and on the south side of it is 14th St. I arrive at this valuation from its locality and from that of the surrounding property. Also my Hollywood home which I valued at between $10,000 and $12,000 on that date. I consider that to be its reasonable market value at that time. In the schedule I put in simply the amount of the homestead on it.

By The COURT.—Do both sides agree that this property was stock in trade of a merchant?

Mr. CHASE.—That is what I claim the evidence absolutely demonstrates it.

The COURT.—What do you say about it, Mr. Janeway?

Mr. JANEWAY.—I have not made any contention about it. I don't make any particular point of it. It probably was stock in trade of a merchant.

Also I had the warehouse property at Bannister siding, covered by the mortgage to the Security Trust Co. of Bakersfield. That consisted of two acres of land with the warehouse of the capacity of 600 tons and platform and a $1500 private track running from the railroad into the warehouse property for loading hay and grain. I consider that to have been of the value of about $3000 or $3500 on April 23, 1915. Also the twenty acres covered by the trust deed in favor of the defendant bank, which I consider to have been worth about $200 on April 23, 1915. Also a corrugated frame warehouse at Wyble siding located on leased ground, which I consider to have been

(Testimony of Alfred W. Bannister.)

of the value of $400 or $500 on April 23rd. I also had the merchandise that was mortgaged to the defendant bank, and which I consider to have been worth on April 23rd at least the amount for which it was mortgaged. That was its fair valuation at that time. That was practically all the merchandise I had. I also had household furniture and wearing apparel worth $1500. Horses worth $75. Stutz automobile worth $1000. I do not call the automobile stock in trade. There was a chattel mortgage covering that. Warehouse equipment worth $150. Office fixtures worth $150. Open book accounts listed at $4834.76. Claim against Los Angeles Hay Storage Co. $17,000 and some odd dollars, which claim I didn't consider of any particular value on April 23rd. My condition on April 8, 1915, was practically the same as it was on April 23, 1915, so far as the assets I had and their valuation. I employed an attorney to represent me when the involuntary petition in bankruptcy was filed. He accepted the employment and was at the same time the attorney for the Los Angeles Hay Storage Co.

(Stipulated that Bannister was adjudged a bankrupt by default.)

In the fore part of April, 1915, I came to Los Angeles in connection with the affairs of the Los Angeles Hay Storage Co. and had a meeting at the bank with Mr. Flory, Mr. Mead and Mr. Zombro, in which the affairs of that company were discussed, and it was arranged between us that the concern was to be handled by certain of these men as trustees, and Mr.

(Testimony of Alfred W. Bannister.)

Flory was to act as manager for them. I considered Flory a competent man to conduct a business of this nature, as he was probably the oldest man in Los Angeles in the hay business. At this meeting he expressed himself as being of the opinion that he could get the business out of its difficulties, providing I would waive payment of my claim for $17,000 for twelve months, and the other creditors would waive payment of their claims for six months. I was to have nothing to do with the business. I then waived payment of my claim for twelve months and later understood that the other creditors had done the same with respect to their claims for six months. Before this talk Mr. Flory had been around sounding some of the creditors who wanted to press the concern for payment and he had already secured their agreement to this extension. I then returned to Bakersfield with the understanding that the affairs in Los Angeles would be worked out in such manner as to prevent bankruptcy proceedings. I thought if Mr. Flory was to take charge I might probably get a good deal of my claim out of the company, but I would have to wait twelve months for it. When I stated in the letter that I kicked it goodby I meant that I thought I had lost it.

The COURT.—There is one thing that I am not satisfied about yet, Mr. Bannister, and that is when you learned that you had a stockholder's liability in that company. When do you think you first learned that you were liable as a stockholder?

A. I understood my liability was to the banks only down here and that is why I begged them to let me

(Testimony of Alfred W. Bannister.)

try and work out the salvation of the company. I didn't know that I should lose everything I possessed in a stockholder's liability.

The COURT.—Who first told you that you were liable as a stockholder?

A. When I found that they had filed involuntary bankruptcy.

Q. Is that the first you knew about it?

A. That is the first I knew about it.

Q. Who told you about that, your attorney?

A. Probably. I really don't know. I was just talking matters over and I couldn't say who told me in the first place that they would get everything I had.

(WITNESS, continuing.) Prior to April 8th I had not discussed particularly with Mr. Russell the affairs of the Los Angeles company. He knew that I had some interest in the company, but I never told him how much money I had invested in the company down here. I saw him on April 8th, the day the trust deed was given, but do not think that anything was said at that time about the Los Angeles company. I was not in Bakersfield on April 23rd, the day these mortgages were put on record, but in Los Angeles, I think.

Q. When did you first know that they had been put on record?

A. Sometime within that week.

Q. Who told you?

A. Mr. Russell told me, I think.

Q. Was that after you had returned from Los

(Testimony of Alfred W. Bannister.)

Angeles from this last meeting, respecting the affairs of the Los Angeles Hay Storage Company?

A. I think so; yes.

Q. When you first learned about these chattel mortgages being put on record, and the trust deed, they had already been put on record, had they?

A. Yes.

Q. And Mr. Russell was telling you something that he had already done and not what he was going to do?

A. I think so; yes.

(WITNESS, continuing.) I then told him it was satisfactory so far as I was concerned. We had the understanding all the time that he could do it any moment he wished to. When I returned that time and Mr. Russell informed me the mortgages and trust deed had been placed on record I found a representative of the bank in possession and in charge of my warehouse at Bakersfield. Mr. Russell told me that he had done that; I did not say anything in reply. Prior to this conversation with Mr. Russell upon my return from Los Angeles I don't recollect that I had ever discussed with him anything definite about the affairs of the Los Angeles company, nor had I told him what my interest in that company was. I had told him that I had this claim of $17,000 against that company and was having some trouble in getting it paid, but I had not told him prior to that conversation that I did not expect to get anything from the claim; and prior to that time I didn't know anything about being held for stockholder's liability in that company. When

(Testimony of Alfred W. Bannister.)

Russell told me he had placed somebody in charge of my warehouse and was going to sell the mortgaged merchandise I probably told him to go ahead; I did not protest. After that time every sale made in the warehouse was reported daily to the bank and the proceeds of those sales paid to them direct from the purchasers except the cash purchasers at the warehouse and those proceeds were turned over daily. I was simply there assisting in the sales of property to the best advantage in order to obtain the best prices and the property was shipped in the name of the bank.

The COURT.—(Examining one of the mortgages) "Bale of ties." What is that?

A. That is wire to bale hay with.

The COURT.—Do you gentlemen claim that that was merchandise in trade or not? Did you have it for sale?

A. Yes; it was for sale.

The COURT.—This property was valued at $5,399. It seems to me that it was all merchandise. Is that right? I understand that it is a material proposition that it is merchandise and you gentlemen agree that it is merchandise.

(WITNESS, continuing.) When I stated on direct examination that I continued in possession of the Bakersfield warehouse until some time in June I meant being in possession. I was there. I was there personally all the time. The bank had a representative there, a Mrs. Vera Fitzpatrick. She had charge of the office of the warehouse.

Q. And all sales were reported to her?

(Testimony of Alfred W. Bannister.)

A. Yes; they were on record in the books.

By The COURT.—The men in charge and doing the work, were they under your employ or in the employ of the bank?

A. They were paid by check which went to the bank.

Q. Was there a different arrangement made about those men that were working there?

A. No. I think not.

(WITNESS, continuing.) No suit was ever started against me by any of my creditors prior to the filing of the petition in involuntary bankruptcy other than that instituted by Mr. Wells, and I know of no judgment obtained against me prior to that time. At the time the defendant bank received the blanket chattel mortgage of January 12, 1915, (Plaintiff's Exhibit 4), it at that time held other chattel mortgages from me covering the same property as was covered by this blanket chattel mortgage; and those former mortgages had in each instance been given at the respective times that the promissory notes referred to in the blanket mortgage were given. The first transaction I ever had with the National Bank of Bakersfield was on November 2, 1914, when I borrowed $800 from them The only official of the bank that I had my dealings with was J. K. Russell, the cashier. I first became acquainted with him several years ago when he was cashier of the Bank of Bakersfield. That bank was merged with the Security Trust Co. and at that time Russell formed the defendant bank, or a little later. I had business transactions with Mr. Russell at the old

(Testimony of Alfred W. Bannister.)

Bank of Bakersfield and secured loans from that bank through him, which loans were secured by my giving chattel mortgages on horses, mules, wagons and warehouse. None of those chattel mortgages were ever recorded. I continued to do business with the Security Trust Co. after the merger for some time until I transferred my account to the defendant bank about November 2, 1914, at Mr. Russell's solicitation. On that occasion I told Mr. Russell that I wanted to buy some oats and corn on storage and could get the storage receipt by paying for the merchandise and wanted to borrow the money from the bank and would turn over the storage receipts to the bank. I secured the loan and brought the storage receipts and turned them over to Mr. Russell at that time. I expected to have similar transactions with him thereafter and we discussed that at that time. On November 11, 1914, I secured a loan of $2500 from the defendant bank and signed a promissory note and a chattel mortgage securing the same. At that time I told Mr. Russell that I had contracts with different people for corn, hay and grain, or whatever they had in my line of business, and they would want payments to help harvest, and I used that money for that purpose. I told Russell that I wanted this loan for that purpose and would secure him by a chattel mortgage on the stuff when purchased. The money thereby secured I so used in accordance with my conversation. The sixty tons of oats referred to in the mortgage as being located in Bannister's warehouse must have been partially purchased with the $800 I had previously borrowed from

(Testimony of Alfred W. Bannister.)

the bank—they were worth more than $800. I used all or some portion of the loan of $2500 obtained on November 11th in buying corn and hay on the ranches of Weyand, Barnett and Webster, all located in Kern County. Russell did not go out and examine that lot. I used the money that I secured on this loan in purchasing that stuff. It was later moved into one of the warehouses. Some of it might have been shipped out direct. We also discussed the proposition that after this property had been transferred from the different ranches to my warehouse I would give a blanket mortgage covering it, which I afterwards did; (referring to Plaintiff's Exhibit 4) that is the blanket mortgage of January 12, 1915. I cannot tell whether this blanket mortgage covered all this property. So much stuff was being shipped in and out all the time. It was for sale at any time. If any of the stuff was sold it was replaced by other merchandise, and if I did not use the proceeds of the sale of any part of it to buy additional merchandise I paid the proceeds to the bank on the indebtedness evidenced by the different notes.

Q. By Mr. JANEWAY.—Did you at this time have any funds with which you could have purchased this property?

Mr. CHASE.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Overruled.

Mr. SCHROETER.—What time are you referring to?

Mr. JANEWAY.—November 11, 1914.

(Testimony of Alfred W. Bannister.)

The COURT.—He said he didn't have any means to pay it.

(WITNESS, continuing.) I don't recollect whether I had any conversation with Mr. Russell at the time the mortgage of November 11th was given relative to his recording or not recording it.

(Said chattel mortgage of November 11, 1914, executed by Bannister in favor of the defendant bank, in the same form as Exhibit "A" attached to this statement, and covering sixty ton of oats at Bannister's warehouse, 14th and D Sts., Bakersfield, also all corn on Weyand's ranch and on Barnett's ranch and all hay on Webster's ranch, Kern County, and given as security for Bannister's note of $2500 in favor of defendant bank, dated November 11, 1914, due sixty days thereafter, which mortgage it never recorded, was at this time introduced and received in evidence as Defendant's Exhibit "A.")

(WITNESS, continuing.) On December 1, 1914, I secured a loan of $1,000 from the defendant bank and at that time executed a promissory note therefor secured by a chattel mortgage covering 55 tons of Egyptian corn which was then in my warehouse at Bakersfield. I told Mr. Russell that I was making this loan to buy this corn and grain. I had only partly paid for it and used a part of the proceeds of the loan to pay the balance due on it.

Q. Did you use all of the $1,000 in paying the balance due on this 55 tons of Egyptian corn?

A. I could not tell.

(Testimony of Alfred W. Bannister.)

Q. If you did not use all of it, what did you do with the balance?

A. I might have bought some hay and grain. So many of the deals lapped one over the other.

Q. Was that hay or grain later covered by the chattel mortgages to this bank?

A. Yes, sir.

(WITNESS, continuing:) I can't recollect whether Mr. Russell went down to the warehouse and viewed this particular lot or not. He went down to the warehouse at different times to look things over.

Q. At the time you made this loan did you have funds with which you could have paid the balance due on the purchase price of this corn?

A. Only through the sale of the merchandise that was coming in and going out all the time. There was always a bank balance.

Q. Some part of the merchandise you had already mortgaged by this previous mortgage.

A. By turning it over.

(WITNESS, continuing:) I don't think there was any particular conversation at this time about Mr. Russell's recording or not recording the mortgage.

(At this time said mortgage of December 1, 1914, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement, and covering 55 tons of Egyptian corn at Bannister's warehouse, Bakersfield, and securing Bannister's note for $1,000, dated December 1, 1914, in favor of defendant bank, and due ninety days after date, which mortgage was never recorded, was introduced

(Testimony of Alfred W. Bannister.)

and received in evidence as Defendant's Exhibit B.)

(WITNESS, continuing.) On December 9th I secured a loan of $1500 from the defendant bank and at that time executed a promissory note therefor secured by a chattel mortgage covering twenty tons of barley and twenty tons of corn that was in the Bannister warehouse, 14th and D streets, in Bakersfield, at the time, also covering alfalfa hay, barley hay on several different ranches in Kern County, which hay I proposed to buy with the proceeds of this loan and so told Mr. Russell; and I think he went out with me and looked at the Gregg hay. I don't recollect about the balance of it. At that time I did not have funds with which I could have purchased this property. I told Mr. Russell at the time that I was going to use the proceeds of this loan to buy this property on these different ranches, and I so used them.

(Said mortgage of December 9, 1914, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement and covering 20 tons of barley and 20 tons of corn at Bannister's warehouse, corner 14th and D Sts., Santa Fe yards, Bakersfield, also all alfalfa hay on Gregg's ranch, all barley hay on Garrett's ranch, all barley hay on Machada's ranch, and given as security for his note in favor of the bank in the sum of $1500, due thirty days after December 9, 1914, which mortgage was never recorded, was introduced and received in evidence as Defendant's Exhibit "C".)

(WITNESS, continuing.) On January 4, 1915, I secured a loan from the defendant bank of $1500 and

(Testimony of Alfred W. Bannister.)

then executed a promissory note therefor secured by a chattel mortgage of the same date covering certain corn, hay and barley in the Bannister warehouse at Wyble siding, Kern County, which I had only partially paid for. I used the proceeds of this loan to pay the balance of the purchase price, and I could not have paid it except by means of this loan, and the preceding loans. I could not say whether Russell saw the property or not. There was nothing said about the bank recording or not recording the mortgage.

(Said mortgage of January 4, 1915, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement, and covering 60 tons of corn, 20 tons of alfalfa hay and 50 tons of barley hay, in Bannister's warehouse, Wyble siding, Kern County, and given as security for his note in favor of the bank for the sum of $1500, due sixty days after January 4, 1915, which mortgage was never recorded, was introduced and received in evidence as Defendant's Exhibit "D".)

(WITNESS, continuing.) On January 5th I secured a loan from the defendant bank of $1,000 and executed a note therefor secured by chattel mortgage, covering seventy tons of corn in the Bannister warehouse at Bakersfield. I told Mr. Russell at the time that the money was to be used in paying the balance of the purchase price for that corn, and it was so used; and at that time I did not have funds to pay it except by means of this loan.

(Said mortgage of January 5th, executed by Bannister in favor of defendant bank, in the same form as

(Testimony of Alfred W. Bannister.)

Exhibit "A" attached to this statement, and covering 70 tons of Egyptian corn at Bannister's Bakersfield warehouse, given as security for his note in favor of the bank for the sum of $1,000, due thirty days after January 5, 1915, which mortgage was never recorded, was introduced and received in evidence as Defendant's Exhibit "E".)

(WITNESS, continuing.) At the same time that this last loan of $1,000 was secured I executed and delivered to Mr. Russell a chattel mortgage in favor of the defendant bank covering my Stutz automobile, which mortgage was given as additional security for this loan of $1,000 and the previous loan of $1500 made the preceding day.

(Said mortgage of January 5, 1915, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement, and covering one four-passenger convertible 6 Stutz 1913 model, series 4-B, car No. 106, register No. 27987, located at Bannister's warehouse, 14th and D Sts., Bakersfield, and given as security for his note in favor of the bank, dated January 4, 1915, for the principal sum of $1500, due sixty days after date, and also as security for his note in favor of the bank, dated January 5, 1915, for the principal sum of $1,000, due thirty days after date, which mortgage was recorded April 23, 1915, in Kern County, was introduced and received in evidence as Defendant's Exhibit F.)

(WITNESS, continuing.) On April 8, 1915, I executed and delivered to Mr. Russell the trust deed of that date covering the twenty acres on the San Emidio

(Testimony of Alfred W. Bannister.)

Range. It was given as security for my indebtedness to the bank aggregating $10,000, which had been incurred previously.

(Said trust deed was thereupon introduced and received in evidence as Defendant's Exhibit G, being trust deed in the usual form, executed by Bannister April 8, 1915, to J. K. Russell and F. J. Galtes, as trustees, for the benefit of the defendant bank as beneficiary, and given as security for the sum of $10,000, evidenced by promissory notes executed by Bannister to the defendant bank, and covering real property in Kern County described as the south half of the southeast quarter of the southeast quarter of section 35, township 11 north, range 23 west, S. B. & M., and recorded in Kern County April 23, 1915.)

(WITNESS, continuing.) I don't recollect that anything was said at the time this last chattel mortgage was given or at the time the trust deed was given between Mr. Russell and myself about the recording of those instruments. I couldn't recall the exact dates. It was not after they had all been given, but at different times I told Mr. Russell that he could record the mortgages at any time he wished to. I cannot fix any particular date or occasion for such conversation.

Q. Now, you state, Mr. Bannister, during this period of time from November, 1914, until the fore part of May, 1915, that you were constantly buying and selling merchandise?

A. Yes, sir.

Q. Did you during all that period keep in your warehouse at Bakersfield an equal amount of grain or

(Testimony of Alfred W. Bannister.)

hay to that covered by this blanket mortgage of January 12?

A. Yes.

Mr. CHASE.—I move to strike out the answer as immaterial.

The COURT.—I am going to ask another question. Do you mean to say when you shipped out a carload of hay you got another carload in?

A. I had more stock in and out of the warehouse all the time.

Q. And you kept it stocked up equal to what was under that mortgage all the time?

A. There were very little shipments of hay out of the warehouse. It was gotten more out of the sidings. It was more relative to corn, and that was always left practically intact all the time, and it was all shipped out when the season got more advanced.

Q. From the time of this mortgage, April 23, on down, it was all shipped out after that mortgage was made—after that mortgage of January 12, was recorded—

Mr. JANEWAY.—It was recorded on April 23.

The COURT.—And it was given January 12. Now, from January 12 to the 23rd of April how much of this property that was under mortgage was there on the 23rd of April?

A. All of it, the whole bulk.

Q. By Mr. CHASE.—The particular property?

A. The whole bulk of the property.

Q. Had you shipped any between January 12 and

(Testimony of Alfred W. Bannister.)

April 23 from the property that was under the mortgage?

A. I may have done so.

Q. You don't know?

A. Not at present.

Q. Now, it was all shipped after April 23?

A. I think so.

Q. Now, you say when you got back up there after April 23 you found some lady in your office?

A. Yes.

Q. What was her name?

A. Vera Fitzpatrick.

Q. Was anything said to you as to what she was doing there?

A. She was put there by Mr. Russell.

Q. Who told you that?

A. Mr. Russell told me.

Q. What was your arrangement then between you and Mr. Russell concerning the property?

A. That I was to ship the stuff out and she was to make records of it and turn it into the bank daily.

Q. What time did she get there in the morning?

Mr. JANEWAY.—Does Your Honor refer to the first morning or each morning?

The COURT.—Each morning.

Mr. JANEWAY.—He was not there the first morning. He was in Los Angeles.

Q. By The COURT.—After you got there what time did she get there in the morning?

A. About 8 o'clock or 9.

Q. Was the office open when she got there?

(Testimony of Alfred W. Bannister.)

A. Yes.

Q. What time did she leave there in the evening?

A. At different times; 5 or 6 o'clock.

Q. Was the office open after she left?

A. Sometimes.

Q. How many other people were about there?

A. Three or four men.

Q. Do you know how many?

A. Not for certain.

Q. How long had those men been there?

A. One man worked for me eight or ten years teaming and so on.

Q. He was a warehouse man who continued to work there?

A. Yes.

Q. Who paid her wages?

A. The bank.

Q. Do you know whether she was paid?

A. No.

Q. And you paid the wages of the men?

A. Yes.

Q. How big a room is that office?

A. 12 by 14, I should think.

Q. How many desks in there?

A. Four. They were built in desks—two of them.

Q. Part of the building?

A. Yes.

Q. Did she occupy a desk?

A. Yes, that and the typewriting desk.

Q. Did she run a typewriter?

A. Yes.

(Testimony of Alfred W. Bannister.)

Q. Do typewriting for you?

A. Yes.

Q. Was she a stenographer also—take shorthand?

A. Yes.

Q. Wrote letters for you?

A. Yes. Originally she was in charge of the Kern Valley Bank affairs—the bank that closed—and she had charge of all of it, and she did my work on the side, and she came from her office down to my office at one time.

Q. Before that?

A. Before that.

Q. She had done some work for you in your office?

A. Oh, yes.

Q. Did she take inventory of the property that was on storage there?

A. I don't believe so.

Q. When the property was shipped out did she keep an account of it?

A. Yes.

Q. Where are the books that she kept? Was it in your books or her books?

A. She took the records from my books.

Q. You think she took the records from your books?

A. Yes, sir, for the business of the day.

Q. And reported it to the bank?

A. Yes.

Q. Were there any signs on the building?

A. No. You mean advertising signs?

Q. Yes. Bannister's Warehouse?

A. No.

(Testimony of Alfred W. Bannister.)

Q. Nothing of that kind on the building?

A. Not at that time.

Q. Had there been previous to that time?

A. Yes; I had a big fire there with the 1200-ton warehouse that I had there, and that burned my sign.

Q. After you built this warehouse there was no sign on the building?

A. This was the old warehouse with the brick wall. It was a grain warehouse. And the rest of the property burned away.

Q. How long was that before January, 1915?

A. That fire occurred, I think, in 1912 or '13.

The COURT.—Go ahead with the examination.

Q. By Mr. JANEWAY.—Was this lady in your employ at the time the bank put her there in charge?

A. She did all my stenographic work and typewriting.

Q. Did you pay her by the month?

A. I paid her by the month.

Q. Was she being paid by you immediately preceding the time the bank put her in charge?

A. Yes.

Q. How much did you pay her?

A. I paid her $50 a month.

Q. Was she in the office there?

A. No; she had her own office up town. The Kern Valley Bank's affairs were conducted from their own office uptown, and I used to take a lot of letters up there and she did a lot of my work.

Q. And you did work up there in her office?

(Testimony of Alfred W. Bannister.)

A. Yes. And when it was convenient she would come down and help me with the books also.

Q. She did not stay in the office continually all the time till the bank put her in charge?

A. No.

Q. And nothing went out of that warehouse after she was put in charge but what she made an account of?

A. No.

Q. And she reported those accounts daily to the bank?

A. Yes, sir.

Q. And any cash sales were deposited daily with the bank?

A. Yes.

Q. Would you say that on April 23d there was as much merchandise in that warehouse as there was covered by this blanket mortgage of January 12?

A. Blanket mortgage of January 12?

The COURT.—He testified that there was; that he kept that stock up.

A. Oh, yes.

The COURT.—There was as much property in there on April 23d as there was there when you made that mortgage?

A. Yes.

The COURT.—That is what I understood in answer to my question.

Q. By Mr. JANEWAY.—And if you made any sales between those dates you restored the property to

(Testimony of Alfred W. Bannister.)

the warehouse by purchasing other property and placing it there—property of the same character?

A. Yes, sir.

Q. And the proceeds of any of those sales less the expenses of your business was paid to the bank on account of these various notes?

A. Yes.

Q. And the proceeds of all shipments that went out of that warehouse after April 23d were paid direct to the bank, were they not?

A. Yes.

Q. And you did not pay Mrs. Fitzpatrick for what she did in there as a representative of the bank?

A. No.

Q. By The COURT.—Did you continue to pay her for writing your letters?

A. Yes; at her office?

Q. No, no. After she came down there and was in your office did you pay her for writing your letters?

A. I think her salary went along just the same.

Q. Fifty dollars a month?

A. Fifty dollars a month.

Q. Have you anything here to show those payments, any checks?

A. No; she has a preferred claim for three months' salary.

(WITNESS, continuing.) I don't think that on April 23, 1915, I knew or had taken occasion to figure up the aggregate of my indebtedness on that date.

Q. Am I correct in understanding your testimony to be that any amounts paid by you between the 5th

(Testimony of Alfred W. Bannister.)

day of February, 1915, and the 4th day of May, were the proceeds of some part of this property that was covered by the chattel mortgages in favor of the defendant bank?

A. Yes; the proceeds of corn and hay and grain and so on, that I shipped out, and money borrowed from the bank. All of it was covered previous to the sale by some of these mortgages in favor of the bank. I had no other source of income during that period.

(On

Redirect Examination

the witness testified as follows:)

These mortgages to the defendant bank covered nearly all my stock in trade.

Q. After April 24th and down to the time that the trustee in bankruptcy took charge of your business up there you sold some of your stock and bought other stock and paid out money and received money during that time, didn't you?

A. I don't think I bought very much during that time.

Q. Well, you conducted your business in the regular way all the time?

A. Yes.

Mr. JANEWAY.—I object to his question as to conducting it in the regular way.

The COURT.—It calls for a conclusion.

(WITNESS, continuing.) They took possession of it by having somebody in charge down there. Mrs. Fitzpatrick was in charge. Mrs. Fitzpatrick received

(Testimony of Alfred W. Bannister.)

the same salary from me subsequent to April 24th that she had received prior to that time and did the same work for me.

(Bannister's deposit book in the defendant bank was then presented to him.) My deposits in the defendant bank from April 22nd, 1915, are all substantially correct. They came from the sale of stock from my warehouse.

(Said deposit book was introduced and received in evidence as Plaintiff's Exhibit 12, which shows the following deposits between April 23, and June 18, 1915:

April 26	$170.00
April 26	450.83
April 27	81.25
April 29	167.35
May 1	30.00
May 4	140.70
May 5	696.00
May 6	95.62
May 6	609.00
May 7	93.84
May 7	156.40
May 8	96.40
May 10	891.39
May 10	984.75
May 11	876.48
May 11	866.64
May 11	933.31
May 11	181.03
May 14	484.15

(Testimony of Alfred W. Bannister.)

May 15	19.10
May 17	750.00
May 17	240.10
May 18	$ 50.00
May 19	337.30
May 19	349.15
May 19	315.00
May 19	310.65
May 20	112.50
May 20	551.29
May 20	140.39
May 21	18.75
May 22	492.21
May 26	92.51
May 27	185.42
June 1	613.63
June 1	500.00
June 3	42.00
June 7	68.21
June 8	28.24
June 10	53.15
June 16	29.23
June 18	37.75

(The witness was then shown a blotter book showing the cash sales made from day to day of stock in the warehouse at 14th and D streets, and stated that the items were correct.)

Q. The sales here that were made were made out of your stock in trade, were they not, from April 23d on down to June 23d?

(Testimony of Alfred W. Bannister.)

A. That was purchases made of rolled barley and screenings and so on.

Q. I mean included in these sales there was property that was included in this mortgage, was there not?

A. I think the most of those sales of rolled barley and stuff was not included in the mortgage at all. They were just minor sales made from the warehouse.

Q. Let us take April 23d. We have some wheat hay, alfalfa, rolled barley and some Indian corn.

A. That is April 23?

Q. Yes. Now, we have on the same day some wheat hay, rolled barley, oats and oat hay.

A. Very small items. A bale of hay or a sack of barley.

Q. Take it on April 24, alfalfa, rolled barley, red ear corn, wheat bran, corn, alfalfa, oat hay and so forth.

A. Yes.

Q. Take it on April 26. Alfalfa.

A. Fifty cents.

Q. Oat hay.

A. A dollar.

The COURT.—Do you want to put those entries in evidence?

Mr. SCHROETER.—I want to show the witness' testimony that he sold not one particular item, but that he sold from this stock that was covered by these purported mortgages small lots in the regular course of trade.

Q. By The COURT.—Did you, Mr. Bannister?

(Testimony of Alfred W. Bannister.)

A. Some of those items to people that came down to the warehouse and wanted a bale of hay or something like that.

Q. Which was mortgaged?

A. Yes; the rolled barley and other stuff came from the mill and is not in the mortgage.

Q. If any man came to get baled hay or Indian corn or Egyptian corn, whatever it was, you sold it, whether it was in the mortgage or not?

A. Yes.

(The book containing the duplicate shipping receipts issued by the Santa Fe R. R. for shipments during 1915 from Bannister's warehouses was then introduced and received in evidence as Plaintiff's Exhibit 13, and it contained shipping receipts issued in the names, on the dates and for the amounts as follows, to wit:

(Testimony of Alfred W. Bannister.)

Date		Consignor	Goods Shipped	Amount
1915				
Feb.	23	A. W. Bannister	c. l. oat hay	24660 lb.
"	23	" " " per N.	198 bales alfalfa	22000 "
"	23	" " " " "	272 " "	31420 "
"	23	" " "	195 " "	
"	24	" " "	230 sacks Egypt corn	30090 "
"	25	" " " per N.	180 bales barley hay	22500 "
"	25	" " " " "	180 " " "	22500 "
"	26	" " " " "	4 sacks seed barley	400 "
"	27	" " "	196 bales alfalfa	
Mar.	1	" " " per N.	196 " "	
"	2	" " " " "	53 " "	
"	1	" " " " B.	196 " "	21580 "
"	3	" " " " N.	9 " "	
			8 " grain hay	2000 "
"	4	" " " " "	10 bdls. bale ties	333 "
"	5	" " " " "	11 sacks seed oats	1000 "
			3 " alfalfa seed	150 "
"	8	" " " " "	2 " seed corn	200 "
			1 " sorghum seed	100 "

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
Mar. 9	A. W. Bannister per N.	30 sacks Feterita seed	3900 lb.
" 10	" " per P. T. Neate	309 " Egypt. corn	40250 "
" 12	" " per N.	1 sack alfalfa seed	50 "
" 13	R. S. Ashe	170 bales alfalfa	28000 "
" 13	" " "	170 " "	27600 "
	A. W. Bannister per N.	137 " oat hay	
" 15	" "	187 " alfalfa	
" 15	" " per N.	200 " oat hay	26130 "
" 17	" " " "	192 " alfalfa	
" 19	" " " "	189 " "	
" 22	" " " "	242 sacks Egypt corn	30070 "
" 22	" " " "	1 " " "	85 "
" 24	" " " "	157 bales barley hay	20940 "
" 23	" "	232 sacks Egypt. corn	30105 "
" 25	" " per N.	5 bales alfalfa	685 "
" 26	" "	153 " wheat hay	17390 "
		37 " alfalfa	4080 "
			21470 "

(Testimony of Alfred W. Bannister.)

"	26	"	"	per N.	150	"	wheat hay		17390 "
					37	"	alfalfa		4080 "
									21470 "
"	25	"	"		162	"	barley hay		20130 "
"	26	"	"		162	"	" "		20910 "
"	25	"	"		163	"	" "		20640 "
"	29	"	"		157	"	" "		19880 "
"	29	"	"		117	"	oat "		19500 "
"	29	"	"	per N.	236	sacks	Egypt. corn		30120 "
"	29	"	"	" "	2	"	"		230 "
"	29	"	"	" "	15	bdls.	hale ties		500 "
"	30	"	"		27	bales	barley hay		3900 "
					108	"	oat "		13560 "
					45	"	alfalfa		5240 "
									22705 "
"	30	"	"		200	"	alfalfa		23080 "

Date	Consignor	Goods Shipped	Amount
1915			
Mar. 30	A. W. Bannister per N.	175 bales alfalfa	19330 lb.
" 30	" " " "	186 " "	21605 "
" 31	" " " "	159 " "	19260 "
" 31	" "	192 " "	24240 "
" 31	" "	200 " "	23140 "
Apr. 1	" " per N.	174 sacks corn (red)	
		77 " " (white)	
" 1	" " per P. T. N.	224 " cracked corn	24640 "
		43 " Egyptian "	5480 "
" 2	" " " N.	c. l. alfalfa	21720 "
" 2	" "	c. l. "	22680 "
" 3	" " " "	15 bdls. bale ties	500 "
" 5	" " per P. T. Neate	160 bales oat hay	20100 "
	A. E. Spring per N.	48 sacks sorghum seed	4735 "
" 7	A. W. Bannister per N.	15 bdls. bale ties	500 "
" 8	" " " "	200 bales alfalfa	22680 "
" 9	R. S. Emery " "	179 " wheat hay	20700 "
" 10	A. W. Bannister per N.	6 sacks oats	500 "
" 12	" "	303 " Milo maize	39985 "
" 13	" " " "	12 bdls. bale ties	400 "
" 13	" " " "	324 sacks Milo maize	40535 "

(Testimony of Alfred W. Bannister.)

"	14	"	"	220	bales alfalfa	26400 "
"	15	"	" "	36	" "	4260 "
				2	sacks Egypt. corn	255 "
"	16	National Bank of Bakersfield, per A. W. Bannister per N.		256	" " "	32095 "
"	19	A. W. Bannister	" "	13	" seed rice	1400 "
"	20	"	" "	25	bales oat hay	3240 "
"	20	"	" "	2	sacks cracked corn	160 "
"	21	"	" "	242	" Feterita	
"	22	National Bank of Bakersfield, per N.		224	" "	27745 "
				18	" Egyptian corn	23104 "

Date 1915	Consignor	Goods Shipped		Amount	
Mar. 30	A. W. Bannister per N.	175	bales alfalfa	19330	lb.
" 30	" " " "	186	" "	21605	"
" 31	" " " "	159	" "	19260	"
" 31	" "	192	" "	24240	"
" 31	" "	200	" "	23140	"
Apr. 1	" " per N.	174	sacks corn (red)		
		77	" " (white)		
" 1	" " per P. T. N.	224	" cracked corn	24640	"
		43	" Egyptian "	5480	"
" 2	" " " N.	c. l.	alfalfa	21720	"
" 2	" "	c. l.	"	22680	"
" 3	" " " "	15	bdls. bale ties	500	"
" 5	" " per P. T. Neate	160	bales oat hay	20100	"
	A. E. Spring per N.	48	sacks sorghum seed	4735	"
" 7	A. W. Bannister per N.	15	bdls. bale ties	500	"
" 8	" " " "	200	bales alfalfa	22680	"
" 9	R. S. Emery " "	179	" wheat hay	20700	"
" 10	A. W. Bannister per N.	6	sacks oats	500	"
" 12	" "	303	" Milo maize	39985	"
" 13	" " " "	12	bdls. bale ties	400	"
" 13	" " " "	324	sacks Milo maize	40535	"

(Testimony of Alfred W. Bannister.)

"	14	"	"	220	bales alfalfa	26400 "
"	15	"	" "	36	" "	4260 "
				2	sacks Egypt. corn	255 "
"	16	National Bank of Bakersfield, per A. W. Bannister per N.		256	" " "	32095 "
"	19	A. W. Bannister	" "	13	" seed rice	1400 "
"	20	"	" "	25	bales oat hay	3240 "
"	20	"	" "	2	sacks cracked corn	160 "
"	21	"	" "	242	" Feterita	
"	22	National Bank of Bakersfield, per N.		224	" "	27745 "
				18	" Egyptian corn	23104 "

(Testimony of Alfred W. Bannister.)

Date 1915	Consignor	Goods Shipped	Amount
Apr. 22	A. W. Bannister per N.	26 sacks rolled barley	2000 lb.
		6 " shorts	540 "
		9 " corn meal	1060 "
" 24	" " "	1 " alfalfa seed	110 "
" 24	W. V. Bowers per P. T. N.	219 " white Milo maize	26615 "
" 24	W. V. Bowers per P. T. N.	363 " red "	42620 "
" 27	A. W. Bannister per N.	30 " Feterita seed	3780 "
" 27	" " " "	10 " " "	1375 "
May 3	" " " "	6 bales alfalfa	690 "
" 4	" " " "	26 sacks rolled barley	2000 "
" 4	" " " "	5 " " "	385 "
" 4	" " " B.	195 bales alfalfa hay	24100 "

(Testimony of Alfred W. Bannister.)

Date 1915	Consignor	Goods Shipped	Amount
May 5	A. W. Bannister per B	228 sacks Egyptian corn	30025 lb.
" 6	National Bank of Bakersfield	(75 sacks Feterita	9200 "
		(15 " Egyptian corn (Special)	1845 "
		(360 " Egyptian corn	42700 "
" 6	National Bank of Bakersfield	501 " " "	61070 "
" "	"	484 " " "	55280 "
" "	"	460 " " "	57880 "
" 7	"	468 " " "	54355 "
" "	"	162 bales alfalfa hay	20770 "
" "	"	163 " " "	20810 "
" 8	"	172 " " "	23050 "
" 8	"	178 " "	22470 "
" 8	"	169 " "	19340 "
" "	"	178 " "	20225 "
" 10	"	" " (bulk heads down; could not be lifted)	
" "	"	161 bales alfalfa hay (bulk heads down; could not be lifted)	
" "	"	bales alfalfa hay	
" 11	"	267 " barley "	33575 "

(Testimony of Alfred W. Bannister.)

"	12	"	192	"	oat	"
"	12	"	190	"	alfalfa	"
"	"	"	188	"	barley	"
"	"	"	180	"	grain	"
"	"	"	180	"	barley	"
"	"	"	182	"	alfalfa	"
"	" A. W. Bannister per N.		2 sacks seed grain			
"	12 National Bank of Bakersfield		180 bales alfalfa			
"	13	"	c. l. bulk corn on cob			
"	13	"	c. l. bulk corn on cob			

24960	"	
24700	"	
23075	"	
22370	"	
23410	"	
150	"	
33730	"	
34915	"	

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
May 14	National Bank of Bakersfield	c. l. ear corn (bulk)	31500 lb.
" 14	"	" " " " "	31065 "
" 15	"	145 sacks Egyptian corn	17865 "
" "	"	(40 " Feterita	4435 "
		(79 " shelled corn	8650 "
" "	"	144 bales oat hay	
" "	"	190 " grain "	
" 17	A. W. Bannister per N.	(1 sack wheat	150 "
		(1 " corn	132 "
" 18	" "	8 " Milo maize seed	1000 "
" 18	" "	1 " wheat	135 "
" 19	"	Feterita seed	2570 "
" 19	National Bank of Bakersfield	174 bales oat hay	22620 "
" 20	"	168 " hay	
" 22	"	16 " wheat hay	1995 "
" "	A. W. Bannister per N.	1 " blankets	
" 24	Tarr & McComb, Inc. per P. J. N.	135 " oat hay	
" 26	Tarr & McComb, Inc. per B.	182 " wheat hay	
" "	Tarr & McComb, Inc. per B.	193 " " "	

"	"	A. W. Bannister per P. J. N.	2	"	Feterita seed	205 "
"	27	S. Segari per P. J. N.			c. l. corn	
"	28	Tarr & McComb, Inc. per B.	222	bales	wheat hay	
"	29	Tarr & McComb, Inc. per B.	200	"	oat "	
"	29	Perry Taylor per B.	168	"	" "	
"	31	Tarr & McComb, Inc. per B.	192	"	wheat "	
June	1	Tarr & McComb, Inc. per N.	166	"	oat "	

Date		Consignor	Goods Shipped			Amount
1915						
June	2	Tarr & McComb, Inc. per B.	103	bales	wheat hay	
"	3	Tarr & McComb, Inc. per B.	165	"	oat "	
"	"	Tarr & McComb, Inc. per B.	(105	"	" "	
			(41	"	wheat "	
"	4	Tarr & McComb, Inc. per N.	160	"	oat "	
"	7	Tarr & McComb, Inc. per N.	142	"	wheat "	
"	9	Tarr & McComb, Inc. per N.	(117	"	" "	
			(42	"	oat "	
"	11	A. W. Bannister per B.	5	sacks	corn	600 lb.
"	14	" " L. C.	2	"	rice	150 "
"	14	A. " B.	19	"	C. R. corn	2125 "

(Testimony of Alfred W. Bannister.)

(WITNESS, continuing.) The mortgages were recorded at the request of the defendant bank and they paid for it and charged it to my account.

Q. By Mr. SCHROETER.—Now, on all these occasions that you made payments on these notes, either prior to or after April 23rd, you gave the National Bank of Bakersfield your check.

A. Yes.

Q. You used considerable of these loans in the regular course of your business outside of the purchase of these lots of hay and grain?

A. No.

Q. It was deposited, was it not, to your credit on the bank's books.

A. Yes.

Q. You checked against it in payment of your bills and business, didn't you?

A. Yes.

The COURT.—In this statement (referring to Bannister's examination before the Referee) you say "I talked to Mr. Zombro down here and Mr. Newby, and I told them that I could get through and meet all my obligations in Bakersfield if I was left alone." Do you remember telling them that?

A. Yes.

Q. "And I told them at the National Bank of Bakersfield that I could, but they forced me into involuntary bankruptcy, and there was no help for it at all." When did you tell the National Bank of Bakersfield that you could get through if left alone?

A. That was sometime in April.

(Testimony of Alfred W. Bannister.)

Q. What time in April?

A. I couldn't recall that.

Q. By Mr. SCHROETER.—You can't fix the exact date of any of these conversations that you had with the National Bank of Bakersfield, in which you informed them of your troubles with the Los Angeles Hay Storage Company down here?

A. Not absolutely. Sometime in April.

Q. Was it the fore part or the latter part of April?

A. Probably the latter part.

Q. It was before the bank took charge of the stock, was it not? It was before the bank filed its chattel mortgages on April 23rd?

A. I don't know.

(On

Recross-Examination,

the witness testified as follows:)

Whenever it was I had this conversation with Mr Russell I told him that things were going along satisfactorily at Los Angeles. At the time I secured these various loans from the defendant bank I could have gone to other banks of Bakersfield and have secured similar loans by giving similar chattel mortgages. The checks drawn against my account in the defendant bank during the period of time in question were in payment of bills incurred in the purchase and sale of this mortgaged merchandise and bills incident to the running of the business, and the proceeds of those various small cash sales subsequent to April 24th were turned over to the bank and applied on my in-

(Testimony of Alfred W. Bannister.)

debtedness. I don't think it was my understanding that I could have drawn checks against these deposits to my account subsequent to April 24th to pay creditors other than the defendant bank. The shipping book will show for itself the amount of tonnage of the different articles shipped from the 24th of April to the day of the first shipment in the name of the defendant bank.

(On

Redirect Examination,

the witness testified as follows:)

Q. As a matter of fact, you did pay out of all of these deposits made at any time after April 23d—you did pay out for bills incurred in the regular course of your business, did you not?

A. Yes, in the regular course of business.

Q. Then it is not true that you thought you were to hold these deposits that you had in the bank for the National Bank of Bakersfield?

A. The National Bank of Bakersfield had the deposits in the first place.

Q. They had the deposits in your name?

A. No; they deposited the checks themselves. The returns came to the National Bank of Bakersfield and they were put into the National Bank of Bakersfield. I did not have the handling of that cash at all.

Q. But they were credited on your pass book, were they not?

A. That is for my record.

Q. They were credited on your deposit book to your account?

A. Yes.

(Testimony of Alfred W. Bannister.)

Q. And you paid out of that account to different persons at various times down to June 24, amounts of money from that account, did you not?

A. Yes.

(The witness was then shown certain checks which he identified as having been signed by him. These checks were introduced and received in evidence as Plaintiff's Exhibits 14, 15 and 16, and are the same checks about which Mr. Russell, the Cashier of the defendant bank, was thereafter interrogated. See page 46 of this statement.)

The date of checks enumerated in Exhibits 14, 15 and 16, together with the name of the payee, the amount of the check and the purpose for which it was paid as indicated by check, are as follows:

EXHIBIT 14.

Date		Payee	Amount	Account
May 25, 1915		Memo. check) Amt. deducted by F. Gurnsey on coll.	$ 71.55	
Apr. 30	"	(Memo. check) Interest on notes to 4-30-1915	66.67	
" 22	"	Taylor Milling Co.	40.12	Refund E. Corn
" 29	"	B. C. Unruh	50.00	Hay
" 29	"	J. H. Jones	10.00	Baling

Date		Payee	Amount	Account
Apr. 29, 1915		J. E. Mills	$100.00	Corn
" 29	"	W. B. Babst	152.10	Feterita
May 4	"	National Bank of Bakersfield	500.00	Bills payable
" 4	"	Ardizzi-Olcese Co.	100.00	Acct. F. M. Noriega
" 4	"	W. S. Heck	100.00	Hay
" 4	"	G. P. McNear Co.	18.19	Corn
" 5	"	A. Diodati	125.00	Alfalfa
" 5	"	National Bank of Bakersfield	500.00	Bills payable
" 5	"	N. Robinson	50.00	Hay
" 6	"	Santa Fe Ry Co.	124.70	Freight
" 7	"	B. C. Unruh	131.40	To bal. alfalfa
" 7	"	J. C. Henderson	44.00	Personal
" 7	"	Mrs. Alfred W. Bannister	50.00	"

"	8	"	J. G. Bailey	4.00 Labor
"	8	"	C. Clarke	15.50 "
"	8	"	L. Coghill	18.00 "
"	10	"	Ardizzi-Olcese	100.00 Acct. F. M. Noriega
"	10	"	" "	150.00 A. Diodati
"	12	"	N. Roberts	100.00 Hay and corn
"	10	"	U. S. Steel Products Co.	34.80 Wire
"	11	"	C. E. Lieb	100.00 Hay
May	12	"	Union Lumber Co.	100.00 Lumber
"	12	"	Pacific Tel. & Tel. Co.	58.58 Telephone
"	13	"	Standard Oil Co.	9.50 Gasoline
"	12	"	Cashier's check for Mrs. Alfred W. Bannister	200.00
"	12	"	San Joaquin Light & Power	4.85 Light and gas
"	13	"	W. A. Plummer Mfg. Co.	64.08 Twine—
"	13	"	Kern Valley Electric Works	35.00 Wiring

Date			Payee	Amount	Account
May	13,	1915	R. Robinson	$100.00	Hay
"	14	"	Wiley Smith	200.00	Hay
"	15	"	W. S. Heck	44.48	Corn
"	15	"	G. D. Hassell	8.75	Labor
"	15	"	C. O'Keefe	6.75	"
"	15	"	E. Lynch	5.50	"

"	15	"	L. Coghill	18.00 "
"	15	"	P. T. Neate	18.00 "
"	17	"	Henry Hosking	50.00 Hay
"	18	"	Echo Publ. Co.	4.00 Advertising
"	18	"	Studebaker Garage	100.00 Exp. Stutz
"	19	"	C. Eberle	41.86 Alfalfa
"	19	"	Root & Stewart	100.00 Corn
"	19	"	W. S. Heck	100.00 Hay
"	20	"	Western Union Tel. Co.	3.65 Expense
"	22	"	Ardizzi-Olcese	50.00 Hay
"	22	"	P. Del Carlos	27.37 To balance
"	27	"	C. E. Lieb	50.00 Hay

EXHIBIT 15

Date	Payee	Amount	Account
Mar. 27, 1915	L. Coghill	$ 18.00	Labor
" 27 "	R. E. Dorn	15.00	"
" 27 "	J. W. Thompson	50.00	Baling
" 29 "	M. Kinoshita	19.40	E. Corn
" 29 "	Kern Co. Land Co.	250.00	Kern River Mills
" 30 "	I. T. Bennett	133.60	Corn
" 29 "	Mrs. Alfred W. Bannister	50.00	
" 30 "	J. H. Jones	25.00	Baling
" 30 "	National Fire Ins. Co.	12.33	Insurance

Date	Payee	Amount	Account
Mar. 31, 1915	Sperry Flour Co.	$ 16.50	Mdse.
" 31 "	U. S. Steel Products Co.	116.00	"
" 31 "	Charles Praschil	56.90	Alfalfa
" 31 "	Charles Praschil	56.00	"
Apr. 7 "	Santa Fe Ry. Co.	539.70	Freight
" 6 "	J. H. Jones	35.00	Baling
" 5 "	C. E. Lieb	100.00	Oat hay
" 5 "	Jose Gani	200.00	Corn
" 7 "	Union Lumber Co.	16.27	F. cars
" 7 "	Union Lumber Co.	23.60	Walters & Smith
" 7 "	F. F. Boese	25.00	Thompson—baling
" 7 "	D. D. Webster	75.00	J. W. W.
" 7 "	Kern Furniture Stores	12.50	Mulligan Club
" 7 "	Pete Elrich	75.00	Corn
" 7 "	F. M. Noriega	234.19	Alfalfa hay
" 7 "	Joaquin Sanchez	25.00	Baling
" 7 "	H. Robinson	50.00	Hay
" 9 "	J. W. Campbell	140.59	Barley
" 9 "	Pete Elrich	319.58	Corn
" 9 "	Tony Silver	20.00	Hay
" 9 "	Bakersfield Club	54.75	To balance
" 10 "	R. H. Best	83.20	" "
" 10 "	C. Eberle	50.00	Alfalfa hay

(Testimony of Alfred W. Bannister.)

"	10	"	A.Diodati	50.00	" "
"	10	"	D. Hanson	50.00	Interest
"	13	"	J. H. Jones	50.00	Baling
"	14	"	Redlick's	3.50	Personal
"	15	"	Ardizzi-Olcese	112.15	To balance
"	15	"	Ardizzi-Olcese	188.60	Jose Gani
"	15	"	Ardizzi-Olcese	500.00	To balance
					F. M. Noriega
"	15	"	Mrs. Bannister	50.00	

Date	Payee	Amount	Account
Apr. 16, 1915	Fred Rolling	$200.00	Alfalfa hay
" 16	Morenz & Destafino	168.98	To balance
" 17	I. W. Webster	113.94	" "
" 17	F. F. Boese	22.50	Baling
" 17	J. H. Jones	485.00	"
" 17	Southern Pacific Co.	91.62	
" 17	P. T. Veate	18.00	Labor
" 17	C. Clarke	7.50	"
" 17	L. Coghill	18.00	"
" 19	U. S. Steel Products Co.	116.00	Wire
" 19	Security Trust Co.	9.10	
" 19	I. W. Boese	184.05	To balance
" 19	M. Plastier	81.70	Barley hay

"	20	"	Henry Hosking	100.00 Hay
"	20	"	Kern County	250.00 Mdse.
"	22	"	E. Roberts	600.00 Corn
"	22	"	First National Bank	200.00 J. F. Pfast
"	22	"	M. A. Dulgan	71.55 Oats—grain
"	23	"	C. E. Lieb	100.00 Hay
"	23	"	W. S. Heck	10.00
"	23	"	C. Clarke	12.50 Labor
Mar.	31	"	(Memo. check) Interest on notes	66.67

EXHIBIT 16

Date		Payee	Amount	Account
Mar.	15, 1915	C. J. Russell on sec. retd.	$ 36.00	
Feb.	27	"	Interest on notes (Memo.)	66.67
"	24	"	Mrs. Alfred W. Bannister	50.00
"	26	"	Southern Pacific Co.	52.40 Freight
"	25	"	F. P. Edmunson	95.28 Mdse

Date	Payee	Amount	Account
Feb. 27, 1915	Pacific Tel. & Tel. Co.	$ 25.64	Expense
" 27 "	Frank White	100.00	Baling
" 27 "	C. W. White	30.40	To balance
" 27 "	J. H. Jones	100.00	Baling
" 27 "	L. Coghill	15.00	Labor
" 27 "	P. T. Neate	15.00	"
" 27 "	Sam Toovey	12.50	"
" 27 "	F. Personnell	15.00	"
" 27 "	C. F. McIntyre	14.50	"
" 27 "	R. E. Dorn	12.50	"
" 27 "	German American Sav. Bank	100.00	D. Hansen
Mar. 8 "	Santa Fe Ry. Co.	168.25	Freight
" 3 "	Santa Fe Ry. Co.	48.00	Hay sold for demurrage
" 9 "	E. Roberts	200.00	Hay and corn
" 9 "	J. E. Mills	500.00	Corn
" 10 "	Frank White	100.00	Baling
" 10 "	Maruz & Destofini	200.00	Merchandise
" 10 "	C. Anson	150.00	Alfalfa
" 10 "	Henry Hosking	50.00	Hay
" 10 "	Ardizzi-Olcese	200.00	Corn (Jose Gani)
" 10 "	Pioneer Mercantile Co.	14.55	Expense
" 10 "	J. Hitchcock	8.15	To balance

"	11	"	P. Del Carlos	100.00 Alfalfa seed
"	11	"	Vera Fitzpatrick	50.00 Salary
"	12	"	J. W. Webster	50.00 Hay
"	13	"	M. L. Gregg	62.20
"	13	"	Kate Stubblefield	98.15 White—baling
"	13	"	National Bank of Bakersfield	500.00 Bledsoe & Kastl
"	13	"	C. Eberle	100.00 Hay
"	13	"	Stewart Printing Co.	25.00 Expense

Date		Payee	Amount	Account
Mar.	13, 1915	Wells Fargo	$ 21.52	
"	13	"	J. Saulsberg	43.60 C. Anson
"	13	"	J. H. Jones	175.00 Baling
"	13	"	P. T. Neate	18.00 Labor
"	13	"	R. E. Dorn	15.00 "
"	13	"	R. E. Best	75.00 Hay
"	13	"	L. Coghill	18.00 Labor
"	16	"	E. O. Stancliff	100.00 Baling
"	16	"	Mrs. Alfred W. Bannister	50.00
"	16	"	C. Anson	68.40 To balance
"	17	"	Security Trust Co.	93.34
"	17	"	Kern County Land Co.	250.00 Mdse.
"	18	"	M. Kinostite	139.15 Corn
"	18	"	Clarence White	47.75 Mdse.

(Testimony of Alfred W. Bannister.)

"	18	"	H. I. Stewart	50.00 Corn
"	20	"	E. O. Stancliff	84.15 Baling
"	20	"	J. M. Stevens	20.00 J. H. Jones (Baling)
"	20	"	Vera Fitzpatrick	40.00
"	20	"	Ernest Roberts	250.00 Corn
"	20	"	R. E. Dorn	15.00 Labor
"	20	"	P. T. Neate	18.00 "
"	20	"	National Bank of Bakersfield	300.00 Acct. Bledsoe & Kastl
"	20	"	L. Coghill	18.00 Labor
"	22	"	Joaquin Sanchez	65.00 J. H. Jones
"	19	"	Southern Pacific Co.	50.16 Freight
"	22	"	Frank Roellig	150.00 J. H. Jones (Baling)
"	13	"	National Bank of Bakersfield	298.56 To bal. acct. Bledsoe & Kastl
"	23	"	James O'Neill	8.43 Barley hay
"	24	"	Charles Strombeck	20.50 J. H. Jones (Baling)

Date		Payee	Amount	Account
Mar.	25, 1915	G. W. Craig	$238.00	Alfalfa hay
"	27	"	Ed Sorrenson	25.00 J. H. Jones (Baling)
"	27	"	Pacific Tel. & Tel. Co.	21.77 Expense

(Testimony of Alfred W. Bannister.)

(Plaintiff then offered a certified copy of the claim of Fairbanks, Morse & Co., covering a claim for goods shipped out to Bannister at Bakersfield during January, 1915, amounting to $54.06, certified by the referee in bankruptcy.)

Mr. JANEWAY.—Objected to as immaterial and not within any issue presented here.

The COURT.—The witness testified to that account here this morning.

Mr. JANEWAY.—We are not denying that.

Testimony of W. C. Wells, for Plaintiff.

W. C. WELLS, sworn as a witness on behalf of plaintiff, testified as follows:

I live in Los Angeles and know Alfred W. Bannister. He executed and delivered to me the three notes dated February 25, 1914, in the sums of $500, $500 and $550 respectively, as payment for the sale of stock in the D. P. Flory Co. At the time Mr. Bannister gave me these notes I did not know that he had given any chattel mortgages to anyone on any of his stock in trade at Bakersfield, nor that he was giving any chattel mortgage to anybody and he did not advise me of that fact. Some time in April, 1915, I started suit against him on these notes and attached his Hollywood home.

(On

Cross-Examination,

the witness testified as follows:)

I never obtained any judgment in that case. I had no knowledge of any of these chattel mortgages prior to the date of their recordation. I never asked Mr. Bannister if he had given any mortgages on his property.

Testimony of Minnie C. Myer, for Plaintiff.

MINNIE MYER, sworn as a witness on behalf of plaintiff, testified as follows:

In January, 1915, I was employed as assistant credit manager of Fairbanks-Morse & Co., and during the absence of the head credit manager had charge of the credits of that company. I know Alfred W. Bannister. During January, 1915, he sought and received credit of that company. On January 18th and 26th, respectively. The total amount was $55. At the time the credit was extended I had no knowledge of any chattel mortgages of any kind existing against his property. It was my duty to know the condition of people who received credit. That was my particular business in the company. The credit department only knew about that condition. It was all brought to the attention of that department, any chattel mortgages at all or anything of that kind. No credit would be extended by the company except on the O. K. of that department.

(On

Cross-Examination,

the witness testified:)

I never asked Mr. Bannister whether he had executed and delivered chattel mortgages on any of his property or trust deed or mortgages on any of his real property.

Testimony of James E. Price, for Plaintiff

JAMES E. PRICE, sworn as a witness on behalf of plaintiff, testified as follows:

I am, and for about fifteen years, have been, an adjuster in insolvency, and in connection with my duties as such have handled stocks of merchandise, made inventories, sold and appraised real estate. During that time I have appraised real estate in Bakersfield and in Los Angeles and in the vicinity of those cities, and my duties have been such as to acquaint me with the values of real estate at those places. I know what the market value of the Bannister warehouse and the ten lots upon which it is situated in Bakersfield was on April 23d, 1915. The reasonable market value of it was $10,000. I also know the reasonable market value of the two acres of land, including the warehouse, at what is known as Bannister siding, that property being described in the schedule filed herein as being the third item of the real estate scheduled. At that time its reasonable value was about $200.00. The reasonable market value of Bannister's home place in Hollywood, being lot 17 and the west half of lot 16 of the re-subdivision of the Semi-Tropic Tract, Hollywood, Cal., on that date was about $8,400. The value of the twenty acres on the San Emidio range, known as the south half of the southeast quarter of the southeast quarter of section 35, township 11 north, range 23, west, S. B. M., Kern County, on that date was about $400. The valuations were the same on April 8, 1915. I examined the Stutz automobile, and in my opinion it was reasonably worth $600 on April

(Testimony of James E. Price.)

23, 1915. It sold for about $555. On April 8th and April 23rd, 1915, the two lots conveyed by Bannister to Mr. Hanson in my opinion were worth $1000 together, said lots being lots 69 and 70 in block 1658, Los Angeles County.

(On

Cross-Examination,

the witness testified as follows:)

I had been working around Bakersfield six or seven years prior to the making of this appraisement, and have made a great many appraisements there. The same is true as to my knowledge of real estate values in Los Angeles.

Testimony of J. K. Russell, for Plaintiff.

J. K. RUSSELL, sworn as a witness on behalf of plaintiff, testified as follows:

I am cashier of defendant bank, and prepared all the chattel mortgages in question here. After they were delivered to me by Mr. Bannister they were kept in the vault with the other bank mortgages. The assistant cashier and myself were the only people who had access to them. They were kept there until recorded, April 23, 1915, and those that were not recorded I continued to keep there in the vault. I don't recollect of notifying any of Bannister's creditors that ~~from November, 1914, to the latter part of April, 1915, I knew the market value of hay and grain in and around Bakersfield. At the time of the consolidation of the old bank with the Security Trust Company Bannister continued doing business with the Security~~

(Testimony of J. K. Russell.)

~~Trust Co. for a time. When we first opened up in the defendant bank I solicited his business because he was considered a mighty good client of the old Bank of Bakersfield. We thought he was one of the best customers we had, both for honesty and integrity. I finally secured him as a customer for the defendant bank in November, 1914, when we first made him a loan~~ we held chattel mortgages on any of that stock. Mr. Claflin was the president of the bank on April 23, 1915, and prior thereto. He is an attorney at law with offices above the bank in the building. He did not have any active charge of the bank during the time he was president. I informed him I had these chattel mortgages, and that the same had never been placed of record, but he never instructed me to place them of record.

(At this point plaintiff rested and defendant's motion thereupon made to dismiss the Bill of Complaint in each of the cases on the ground that plaintiff had not proven the issues required to be proven by him and had not sustained the burden of those issues was denied by the Court without expressing any opinion.)

Testimony of J. K. Russell, for Defendant.

J. K. RUSSELL, recalled on behalf of defendant, testified as follows:

I have been cashier of the defendant bank since August, 1913. I organized it, and prior to that time I had been associated with what was known as the Bank of Bakersfield until its consolidation with the Security Trust Company of Bakersfield. I first came to Bakers-

(Testimony of J. K. Russell.)

field in January, 1911, and met Mr. Bannister then. He was one of the customers of the bank, and I was introduced to him the first day I went in the bank, where I was assistant cashier and later cashier. From that time until the date of the consolidation I had business transactions with him on behalf of the bank. He secured some loans from the bank through me during that period. They were secured by chattel mortgages upon warehouse receipts upon hay and grain and corn and sometimes mules. I never recorded any of those mortgages. Bannister had been doing business with that bank prior to the time I became associated with it and had secured loans from the bank secured by chattel mortgages prior to that time, and they had confidence

from November, 1914, to the latter part of April, 1915, I knew the market value of hay and grain in and around Bakersfield. At the time of the consolidation of the old bank with the Security Trust Company Bannister continued doing business with the Security Trust Co. for a time. When we first opened up in the defendant bank I solicited his business because he was considered a mighty good client of the old Bank of Bakersfield. We thought he was one of the best customers we had, both for honesty and integrity. I finally secured him as a customer for the defendant bank in November, 1914, when we first made him a loan

$9000. He said he had some grain in the warehouse

(Testimony of J. K. Russell.)

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(Testimony of J. K. Russell.)

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(Testimony of J. K. Russell.)

on storage and that the parties needed the money and he would like to buy it, and if I would advance the money he would turn over the warehouse receipts for it, and I accepted it on those conditions. He did turn over the warehouse receipts. They were later turned back to him, I think when he sold the stuff and paid the note. The next loan was made November 11th.

A. He told me any time I wanted to I could record the mortgages.

Q. By Mr. JANEWAY.—When was that he told you that?

A. After the mortgages were made.

Q. By The COURT.—After the mortgages were made every time?

A. At the beginning, when he first began business with us. It was to be done the same as in the old Bank of Bakersfield. And at this time when we got the first mortgage it was stated at that time. I can't recall that he said it every time a mortgage was made, but he did speak of it later, that any time I wanted to I could record them.

(WITNESS, continuing.) At the time I made the loan of $2500 on November 11th I went down and looked at the sixty tons of oats in the warehouse. I did not go out with him to look at any other property referred to in that chattel mortgage, for I knew where the stuff was and had seen all of it. Before taking mortgages on the different property I used to go down and view it and make similar trips out in the country to the ranches, not only with him, but without him. Some of the property that was mortgaged that

(Testimony of J. K. Russell.)

I didn't go to see I knew about, for I had traveled quite a bit over it. I was familiar during all that time with the market value of those articles and aimed to loan him on the different articles not over seventy-five per cent of their market value at that time. At the time the original mortgages were made Bannister said he would give me a blanket mortgage on it after he had gotten it into the warehouse. One particular reason was to get it covered by insurance so that we would know how much we had instead of scattering it all around. Later he did give me that mortgage, and that is the blanket mortgage of January 12, 1915. On January 5th there were two chattel mortgages taken, one on the Stutz automobile and one on seventy tons of corn. Both of them were received at the time that I made him the loan of $1,000 on that day. The trust deed of April 8th was executed and received by me on the day of its date. At that time Mr. Bannister said I could take a trust deed or a mortgage on the land and that he might want to use a little more money, so I took a trust deed. I did not ask him for further security. That was all that was said. I made out the trust deed and he signed it. He had acquired the property a short time before that. The chattel mortgages that are unrecorded are included in the blanket mortgage. I did not deem it necessary to record any of them as they were made. I did not record these others that I had the blanket mortgage on when I recorded the big one. The blanket mortgage covered the same property as the others that were unrecorded. When I took that blanket mortgage on the 12th of

(Testimony of J. K. Russell.)

January I went down to the warehouse and checked up the goods that were covered by it and found them all there. On April 23rd I also recorded the trust deed and the mortgage on the Stutz automobile along with the chattel mortgages. I also recorded the chattel mortgage of January 12th on 200 tons of grain and hay at Wyble siding on April 23, 1915, the same day as the so-called blanket mortgage, because it was not included in the so-called blanket mortgage. It was extra grain and hay. For the same reason I recorded at the same time the mortgage on the corrugated iron and frame warehouse at Wyble siding. At the time I received the blanket mortgage I did not deliver up to Bannister the original mortgages, but retained all the mortgages continuously subsequent to their receipt by me. I kept in touch during this period of time with the checks run against his account in the bank to see whether he did use the funds to purchase hay and grain from the different parties that he told me he would. Other than what I have already testified to there were no conversations between Bannister and myself respecting the recording or not recording of these mortgages or the trust deed. During all this period I knew the condition of Bannister's business at Bakersfield and had looked at his books. On April 8th, 1915, I knew he was well fixed up there. On that date he had the Bannister warehouse in Bakersfield and I am familiar with its valuation. I came to Bakersfield in 1911, and am familiar with the sales and purchases of property and have observed the transactions that have been made and have tried to keep in

(Testimony of J. K. Russell.)

touch with the value of property there, and have investigated the value of this property. I place its valuation on April 8, 1915, at $20,000. At that time I knew that the Security Trust Co. had a mortgage of $14,000 against it. The custom among banks in Bakersfield is to loan on real estate about sixty per cent of its value. On that date he had two acres of land at Bannister siding worth about $2,000. Besides the land there was the warehouse and switch track, and for that private switch track he paid $1500. I include that in the value I placed on the lot. He had a warehouse at Wyble siding on leased ground, a corrugated structure which I would say was worth $1,000. He had his home in Hollywood, which he told me he valued at about $12,000. I had never seen it myself. He had the twenty acres on the San Emidio ranch covered by the trust deed, which I considered worth $200. He had a Stutz automobile which I considered worth about $1,000. And he had this hay and grain covered by the mortgages to the bank, which I considered worth about $15,000 on the date mentioned. All my valuations are as of April 8th. All the liabilities that I knew he had at that time were what he had in Bakersfield, which included the $14,000 to the Security Trust Co., the $10,000 to defendant bank and what he owed different farmers for hay and grain purchased, which accounts would not exceed in the aggregate $4,000. I also knew of Bannister's indebtedness to my bank. I knew of no other indebtedness of his. On April 23rd, when I recorded the chattel mortgages, the condition of Bannister's assets and liabilities remained about

(Testimony of J. K. Russell.)

the same. Prior to April 8th I knew that he was interested in Los Angeles Hay & Storage Co., but didn't know how much. He had never told me the extent of his interest in the company. He had discussed with me the fact that they owed him some money and his books showed it to be about $17,000. I knew nothing about that concern at all. I asked him why he didn't get the money from them on his claim and he said he expected to realize money on it. That was some time in February or March, 1915. Later I had a conversation with him about it the first part of April, when he came back from Los Angeles, and he said he had made arrangements whereby this Los Angeles concern would be taken care of and he expected to realize the money on his claim. He said nothing else about the Los Angeles concern, and I did not ask him anything else about it and I had no other conversation with him about it until along in the latter part of April, the 25th or 26th, I think, after the mortgages had been placed on record by me. The situation as I have heretofore detailed it with respect to Bannister's assets and liabilities on April 8th and April 23rd was all that I knew about his business on those dates. I knew that he was making sales from time to time during that period from November until the latter part of April out of his merchandise. He always spoke to me about it. On April 8th he came to me and offered the trust deed and said he might want more money to purchase hay and grain. I put these mortgages on record April 23rd. On the afternoon of April 23rd after the bank closed I was going up the street and met two or three

(Testimony of J. K. Russell.)

people who said "I understand Bannister is in trouble in Los Angeles, financial trouble." I asked what source they got the information from and they said from Mr. Long, a hay and grain merchant who was a competitor of Bannister. I didn't know what the trouble was or anything about it, but inasmuch as they had spoken to me about it I went back to the bank and took the mortgages out and took them down and recorded them. I told my assistant cashier that I was going to record them and that by recording them if something should happen I could take possession and protect my money by doing that. At that time I understood that the rumor had been started by this man Long, whom I knew to be a competitor of Bannister's, but I did not know the extent of Bannister's interest in the Los Angeles concern, and did not know what effect, if any, the failure of the Los Angeles concern would have upon Bannister's credit at Bakersfield. I heard nothing in this conversation to which I have referred which indicated what effect that trouble in Los Angeles would have on him in Bakersfield. I have given the entire substance of what I heard at that time. I did not consult with Bannister before putting the mortgages on record. I don't know whether it was the next day or the day after that I saw him. The mortgages and trust deed were put on record at the same time. I saw Bannister when he returned from Los Angeles, and he said they had attached his home down there, and I told him that I had heard he was in difficulty down there and that I had recorded all the mortgages, and he said "All right. It belongs to you.

(Testimony of J. K. Russell.)

That was the agreement." I asked him what the trouble was and how he was getting in so bad. He said they were trying to put him into insolvency and that he was not insolvent and that he was not going into insolvency. That is about all that was said as to any financial end of it. In addition to recording the mortgages on the 23rd I made arrangements with Mrs. Fitzpatrick to come to the Bannister warehouse at Bakersfield the next morning and look out for all the stuff that went out of there. I told her to keep a clear record of everything that came in and went out. To the best of my knowledge she did. She reported daily to me, and I paid her for doing that work, and have a receipt from her for it at the bank. She did not daily turn over to me the cash received from the office. They would have to have a certain amount of cash there to keep the business going. She came down to the warehouse on the morning of the 24th. Bannister was not in Bakersfield at the time. When he returned I told him I had placed her in charge down there. He assisted thereafter in the sale of the property at the warehouse. After April 24th the other help at the warehouse were paid out of the receipts and the balance of the money was turned over to the bank and went into his account. After April 24th no checks were drawn by Bannister against that account that I did not know of. They were submitted to, and approved by, me before they were paid from the account. He would tell me that he was going to pay a certain amount with check, and I would ask him what for, and he would tell me, and whenever they were pre-

(Testimony of J. K. Russell.)

sented at the bank my teller would bring them in to me and ask if they should be paid. I credited the receipts to his account after April 24th, as he was straightening out his account with us and it was a matter of book-keeping. I didn't know that it would make any difference. A short time before the 24th I had gone over and checked up the stuff covered by the mortgages and on that date I took a casual look around and saw that it was about the same. Mrs. Fitzpatrick did not make any inventory of the property at that time. She walked around with me while I was looking over the different things there. I told the man there to report the sales to her. The greatest portion of the property was sold after April 24th in carload lots shipped in the name of the defendant bank.

(Stipulated that an order has been entered in the bankruptcy proceedings that the proceeds of the sale of the Stutz automobile are being held subject to the determination of this suit.)

Q. What amount is yet due the defendant bank after applying the payments from the proceeds?

A. About $488. As the money was turned in to the bank it was credited to the Bannister account. His indebtedness to the bank was about $10,500.

(WITNESS, continuing.) The proceeds of these sales after April 24th were applied on his indebtedness to the bank. There is about $488 yet due after applying those payments. From February 10th to and in-

(Testimony of J. K. Russell.)

cluding June 24, 1915, his payments aggregated $10,681.13, and the items are as follows:

February	10	$ 200.00
February	16	250.00
February	19	150.00
February	24	200.00
February	25	500.00
May	4	500.00
May	5	500.00
May	6	500.00
May	10	1500.00
May	11	500.00
May	11	1000.00
May	11	1000.00
May	14	500.00
May	17	300.00
May	19	1200.00
May	19	50.00
May	20	700.00
May	22	250.00
May	22	200.00
June	1	500.00
June	24	181.13

All of those payments were made from the proceeds of the sale of the property covered by some one or other of these chattel mortgages that I have referred to.

(On

Cross-Examination

the witness testified as follows:)

I know all those payments were proceeds of sale of

(Testimony of J. K. Russell.)

some part of the chattel mortgaged goods because the checks were sent to the defendant bank.

Mr. JANEWAY.—Before we proceed with the cross-examination of Mr. Russell, I have assumed that the stipulation that was entered into at the beginning of the case that all adverse rulings were deemed excepted to, would apply to Your Honor's ruling on the motion to dismiss that I made at the end of plaintiff's case.

The COURT.—Oh, yes; but whether it did or not, you may have an exception to it.

(WITNESS, continuing.) I have been engaged in the banking business in Bakersfield for five years. The defendant bank has a capital of $100,000. At the present time we have in the neighborhood of eleven hundred customers. I have loaned money to many of them on their notes and have taken chattel mortgages as security, some of which I have recorded and some I have not. We have a regular form of chattel mortgage which I used in making up the mortgages. I thought these chattel mortgages would be valid and enforcible liens on Bannister's property, and did not know that the failure to record them would result in other creditors of Bannister not having notice. I was doing business with Mr. Bannister, and I don't recollect any notification being given to any one of the fact that the bank claimed a lien upon any of his property. I sometimes visited his warehouse two or three times a week, and on several occasions examined his books between the 1st of January and the 23rd of April, 1915, and so far as his hay and grain business in Bakersfield is concerned, I was always in close touch with his busi-

(Testimony of J. K. Russell.)

ness. I knew that Bannister was buying and obtaining credit from other persons in Bakersfield in buying and selling grain. I did not advise any of them of the fact that the bank claimed a lien on his property. I took the precaution to have the affidavit on the reverse of the mortgage executed to the effect that the mortgage was made in good faith and not with the intent to defraud any creditor or creditors of the mortgagor, because it is the regular form that was drawn up by our lawyer and used entirely in our business. I understand that whenever I take a mortgage I am not trying to defraud anybody by taking it, and I understand from the party that is making it to me that he is not defrauding anybody. I didn't think it necessary to give notice to other creditors of Bannister of the fact that we claimed this lien because his business with those people has always been conducted in an honest and straightforward way ever since I have known him in Bakersfield. The farmers and the community at large think of him as an honest and upright man and I don't think he had any idea of defrauding any creditor nor do I believe that he ever intended to. Upon Bannister's return from Los Angeles about April 24th when I advised him I had taken possession of his stock at the warehouse he did not protest against my action but was perfectly satisfied with it; he said it was the bank's property and we had a right to do it.

Q. He did not express any concern to you whatever as to these other creditors?

A. You mean the Bakersfield creditors?

Q. Anywhere.

(Testimony of J. K. Russell.)

A. He spoke of some of the people around Bakersfield that he owed a little money to that he bought the hay and grain from.

Q. Did he tell you how he expected to be able to pay them or take care of them?

A. I don't believe he did at that time.

(WITNESS, continuing.) When he advised me that he was having financial difficulties with the Los Angeles concern I did not protest or remonstrate with him because he had not advised me sooner. There was no particular reason why I should favor him by refraining from recording the chattel mortgages over the chattel mortgage of any other patron of the bank. It was my custom in taking securities from patrons of the bank to record the chattel mortgages or not just as I saw fit. It never occurred to me that possibly their other creditors might have no notice whatever of the fact that the bank claimed a lien upon their property. I testified that in my opinion on April 23rd Bannister's Stutz automobile was worth $1,000.

Q. I show you this letter, and ask you if you stated to Mr. Price at Bakersfield on or about August 12th that in your opinion the value of that automobile was $375?

A. I made a statement—

Q. Did you, or did you not?

A. I don't remember.

(WITNESS, continuing.) On August 12th I sent a mechanician to the garage to examine the machine, but in making my bid for it at the sale of it I did not think it necessary to bid what I thought it was worth.

(Testimony of J. K. Russell.)

I used my own judgment as to whether or not I should record chattel mortgages given me as security by customers of the bank. I didn't think it was necessary to record the chattel mortgages that some people offered me because I thought they were valid without being recorded. I don't remember of Mr. Claflin, the attorney for the bank, ever advising me whether or not it was necessary to record them. I had authority to make loans on such security as I thought would warrant the loan. I testified that the value of the property covered by the chattel mortgages to the defendant bank on April 23rd was approximately $15,000. I don't recall the exact figures at which we sold it, but the price of some of that grain went down about the time we were selling it. I believe there was something like $8800 that was applied to his account. There was some more money above this that was credited to his account and went so far as the general business to pay off some of his creditors at Bakersfield, which, as I stated yesterday, I looked at the checks before it was paid out. We did not sell it at public auction, but we sold it in the regular course of trade. I don't remember the date of the last sale, but think most of the stuff was sold by the 20th of May, as we began to sell it right away. None of the checks against the account were paid subsequent to April 24th without my approval.

Q. Will you state to the Court some of the checks that you approved there?

A. The checks to the farmers around Bakersfield.

There was Gully, Deodetti, and quite a number of

(Testimony of J. K. Russell.)

farmers that I cannot recall the names of off hand. I could probably identify some of the checks. That check to Neate for $18.00, May 15, 1915, was for labor. He was working for Bannister. To L. Coghill, the same date, was for labor. To H. Robinson on May 13th, $100, was for hay. To W. A. Plummer Mfg. Co., on May 13th, $64.08, was for twine. To Standard Oil Co., on May 13, 1915, $9.50, was for gasoline for Bannister's machine. Memorandum check to Bannister for $200, May 12th; I approved that. I suppose he had to live. To C. E. Lieb for $100, May 11th, for hay; probably for a balance due on the hay covering what we had a mortgage on. The amount received from the sale of the mortgaged hay and grain, aggregating $8881.13, I consider the reasonable value of this property when sold, for I got the best price I could for it. When I stated that I sold the mortgaged property I meant the property remaining in Bannister's warehouse, consisting of the balance of the property covered by the original mortgage after sales had been made therefrom, plus property placed therein by Bannister in lieu of property that he had sold. I base my valuation of $20,000 upon the Bannister warehouse property upon a former valuation appraised by the old Bank of Bakersfield. I didn't take into consideration the fact that the Security Trust Company loaned $14,000 on it.

(On

Redirect Examination

the witness testified as follows:)

That property had increased in value, if anything,

(Testimony of J. K. Russell.)

since the old appraisement made by the Bank of Bakersfield. The figures of $8881.13, being proceeds of the sale of the mortgaged hay and grain, was the net amount. There were some expenses deducted. I couldn't tell what they would amount to. Those checks for labor which I identified were for labor at the warehouses where they were shipping out the stuff to sell. And those checks to different farmers were probably on account of balances due them on the purchase price of the goods covered by our mortgage.

(On

Recross-Examination

the witness testified as follows:)

The expenses incident to the sale of this property consisted of freight, help, some hauling and general expense in getting rid of the stuff.

Q. You stated the value of the property to be about $15,000?

A. That is all right. That valuation was put on there as what I considered the price of the goods at that time. Now, as I stated, the price of corn dropped in that period. Corn dropped between April 23rd and the time we sold it. I approved those checks subsequent to April 24th.

Q. There has been introduced in evidence a great many checks. Do you desire the court to understand that all of those checks introduced in evidence represented the purchase price of goods covered by your mortgage?

The COURT.—You can explain it if you want to.

A. My idea was that there was a balance due these

(Testimony of J. K. Russell.)

people upon some of the goods we had a mortgage upon.

Q. That was the way you understood it?

A. Yes; that is why they were passed.

Q. By The COURT.—There is some in there for labor?

A. And some for freight.

Q. By Mr. CHASE.—The checks that were given during the month of March in the purchase of grain—

A. Those checks were for stuff that I knew was for some of the money that we advanced.

Q. All for grain?

A. That is all he was doing.

Q. Did he make any fresh purchase in March?

A. If he did it was replacing some of the stock that he had already gotten.

Q. And did he make any fresh purchase in March for the replacing of property that he sold and were any of these checks paid for stuff bought in March? Were any of those checks paid for goods bought in March?

A. I don't know whether they were bought in March or not.

Q. Examine the checks and see whether any of them were paid for goods bought in March.

A. I see a good many of these are for labor. Mostly all of them,—and paying interest on notes.

Q. By The COURT.—Do the checks show on their face what they were supposed to be for?

A. A majority of them.

I can't state whether Bannister made any purchases of hay and grain in February or March or April pre-

(Testimony of J. K. Russell.)

vious to April 23rd. After April 23rd there was none purchased that I know of. None went into the warehouse. I was down there frequently during January, February and March, and knew that Bannister was shipping in hay and grain during that time, and I knew a great deal of it. I advanced money to enable him to purchase hay and grain from the parties mentioned in the mortgages and he purchased some from other people besides. He may have used some of the money in stock that he was buying and selling and putting in the warehouse. That is where I got my other mortgages. There was a margin all the time. He purchased stuff from other people besides this. That is why I took the mortgage on the warehouse. As one of the mortgages states, some of the stuff was already in the warehouse and some on the ranch. I can't recall any particular purchase that he made after January 12th other than those mentioned in the mortgages. I don't know whether he did or did not make other purchases.

(Stipulated that the foregoing statement is a full, true and correct statement of all the evidence introduced and received on the trial of said causes.)

ERNEST U. SCHROETER,
LUCIUS K. CHASE,
Attorneys for Plaintiff.
G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendants.

EXHIBIT "A."

THIS MORTGAGE, made the ... day of 191.. by of, County of, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

.....

.....

.....

as security for the payment to the said mortgagee of promissory note.., in the words and figures following, to-wit:

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and make take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set h... hand and seal, the day and year first above written.

..... (Seal)

State of California,
County of Kern,—ss.

..... the mortgagor in the foregoing mortgage named, being first duly sworn, deposes

and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

.....

Subscribed and sworn to before me, this day of 191..

.....

Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

....., being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

.....

Subscribed and sworn to before me, this day of 191..

.....

Notary Public in and for Said County and State.

(Endorsements)

Chattel Mortgage

..to..

Dated 191.. Filed for record at the request of A. D. 191 at min. past o'clock M., and recorded in Vol. of page
County Records. Recorder.
By Deputy Recorder.

The foregoing statement of evidence in conformity with Equity Rule No. 75 is hereby allowed and settled and certified to be a true and correct statement of all the evidence introduced and received on the trial of said causes.

Dated March 2", 1917.

OSCAR A. TRIPPET,
District Judge.

[Endorsed]. Original. No. A 32. In Equity. B 94. " " In the District Court of Appeal, Second Appellate District, State of California. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendants. Statement of the Evidence in conformity with Equity Rule No. 75. Filed Mar. 2, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defts.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,
Defendant.

Petition for Appeal and Allowance Thereof.

The above named defendant, conceiving itself aggrieved by the decree made and entered on the 24th day of July, 1916, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and defendant prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendant.

Dated January 16, 1917.

And now, to wit, on January 16, 1917, it is ordered that the appeal be allowed as prayed for.

OSCAR A. TRIPPET,
District Judge.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Petition for Appeal and Allowance Thereof. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In Equity. No. A 32.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States; J. K. RUSSELL and J. F. GALTES,

Defendants.

Petition for Appeal and Allowance Thereof.

The above named defendants, conceiving themselves aggrieved by the decree made and entered on the 17th day of July, 1916, in the above entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith; and defendants pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendants.

Dated January 16, 1917.

And now, to wit, on January 16th, 1917, it is ordered that the appeal be allowed as prayed for.

OSCAR A. TRIPPET,
District Judge.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., et al., Defendants. Petition for Appeal and Allowance Thereof. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,

Defendant.

Assignment of Errors.

The defendant above named prays an appeal from the final decree of this Court to the Circuit Court of Appeals of the United States for the Ninth Circuit, and assigns for error:

1. That the Court erred in overruling defendant's objections to the amendment to the Bill herein, which objections were taken by way of answer to said amend-

ment on account of the insufficiency of its allegations of fact and the uncertainty thereof.

2. That the Court erred in receiving, over the objection of defendant, testimony in support of the allegations of said amendment to the Bill herein, which evidence in substance was to the effect that Bannister on certain dates not specified in said amendment incurred certain indebtedness the amounts of which and the names of the creditors in question were not specified in said amendment.

3. That the Court erred in decreeing that certain chattel mortgage of date December 21, 1914, executed by Alfred W. Bannister in favor of defendant, covering the corrugated iron and frame warehouse at Wyble Orchard Siding, Kern County, to be null and void and of no effect.

4. That the Court erred in decreeing that certain chattel mortgage of date January 5, 1915, executed by Alfred W. Bannister in favor of defendant, covering Bannister's Stutz automobile, to be null and void and of no effect.

5. That the Court erred in decreeing that certain "blanket" chattel mortgage of date January 12, 1915, executed by Alfred W. Bannister in favor of defendant, covering various items of grain and hay therein specified, to be null and void and of no effect.

6. That the Court erred in decreeing that payments made by Alfred W. Bannister to defendant, between April 23, 1915, and May 5, 1915, to the amount of $1,000.00, constituted a preference within the meaning of the provisions of the United States Bankruptcy Act, and in decreeing said payments to be invalid.

7. That the Court erred in decreeing that defendant pay to plaintiff the sum of $9381.13, together with interest thereon at seven per cent per annum from July 10, 1915.

8. That the Court erred in holding that defendant did not, prior to May 5, 1915, take possession of the property described in said "blanket" chattel mortgage of date January 12, 1915, and in the various other chattel mortgages received by defendant from said Bannister.

9. That the Court erred in holding that defendant did not have an equitable lien upon the property described in said recorded chattel mortgages of date December 21, 1914, January 5, 1915, and January 12, 1915, respectively, by reason of the transactions by which said mortgages were respectively received by defendant.

10. That the Court erred in holding that the defendant did not have an equitable lien by virtue of the unrecorded chattel mortgages of date November 11, 1914, December 1, 1914, December 9, 1914, December 21, 1914, January 4, 1915, January 5, 1915, and January 12, 1915, upon the property in said mortgages described, by virtue of the transactions by which said mortgages were respectively received by defendant.

11. That the Court erred in denying defendant's motion to dismiss the bill of complaint, which motion was made at the close of plaintiff's testimony, upon the ground that plaintiff had failed to establish the issues raised by the pleadings and the existence of the elements of the preferences alleged to have been committed by Bannister in favor of defendant.

WHEREFORE, defendant prays that the decree of said District Court in the cause above entitled be reversed.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendant.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Assignment of Errors. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In Equity. No. A 32.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States; J. K. RUSSELL and J. F. GALTES,
Defendants

Assignment of Errors.

The defendants above named pray an appeal from the final decree of this Court to the Circuit Court of Appeals of the United States for the Ninth Circuit and assign for error:

1. That the Court erred in denying defendants' motion to dismiss the bill of complaint, which motion was made at the close of plaintiff's testimony, upon the ground that plaintiff had failed to establish the issues raised by the pleadings and the existence of the elements of the preference alleged to have been committed by Bannister in favor of defendants.

2. That the Court erred in decreeing that certain deed of trust bearing date April 8, 1915, executed by Alfred W. Bannister in favor of J. K. Russell and J. F. Galtes, as Trustees for defendant National Bank of Bakersfield, constituted a preference within the meaning of the United States Bankruptcy Act, and in declaring said deed of trust to be null and void and of no effect.

WHEREFORE, defendants pray that the decree of said District Court in the cause above entitled be reversed.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendants.

[Endorsed]: Original. In Equity. No. A 32. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., et al., Defendants. Assignment of Errors. Filed Jan. 16, 1917. Wm. M. Van Dyke,

Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway, Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,

Defendant.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS that we, National Bank of Bakersfield, a corporation, as principal, and W. A. Ferguson, A. P. Eyraud, F. H. Hall and E. D. Burge, as sureties, are held and firmly bound unto William H. Moore, Jr., Trustee of the Estate of Alfred W. Bannister, Bankrupt, in the full and just sum of $10,500.00, together with costs and interest on appeal, to be paid to the said William H. Moore, Jr., trustee of the estate of Alfred W. Bannister, bankrupt, his successor in interest or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, successors in interest, executors and administra-

tors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 19th day of October, 1916.

WHEREAS the above named National Bank of Bakersfield has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in the above entitled suit by a Judge of the District Court of the United States for the Southern District of California, Southern Division:

NOW, THEREFORE, the condition of this obligation is such that if the above named National Bank of Bakersfield shall prosecute said appeal to effect, and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NATIONAL BANK OF BAKERSFIELD.
By F. H. HALL,
President.
By J. K. RUSSELL,
Secretary.

[Corporate Seal]
W. A. FERGUSON,
A. P. EYRAUD,
F. H. HALL,
E. D. BURGE,
Sureties.

State of California,
County of Kern,—ss.

E. D. BURGE, being by me first duly sworn, de-

poses and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property except from execution.

E. D. BURGE.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal] C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

W. A. FERGUSON, A. P. EYRAUD and F. H. HALL, being by me first duly sworn, each for himself, and not one for the other, deposes and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property exempt from execution.

W. A. FERGUSON.
A. P. EYRAUD.
F. H. HALL.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal] C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

Approved this 16 day of Jan., 1917, by

TRIPPET,
District Judge.

O. K. CHASE.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Supersedeas Bond. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In Equity. No. A 32.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States; J. K. RUSSELL and J. F. GALTES,

Defendants.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS that we, National Bank of Bakersfield, a corporation, J. K. Russell and J. F. Galtes, as principals, and W. A. Ferguson, A. P. Eyraud, F. H. Hall and E. D. Burge, as sureties, are held and firmly bound unto William H. Moore, Jr., Trustee of the Estate of Alfred W. Ban-

nister, Bankrupt, in the full and just sum of $300.00, together with costs and interest on appeal, to be paid to the said William H. Moore, Jr., trustee of the estate of Alfred W. Bannister, bankrupt, his successor in interest or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, successors in interest, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 19th dav of October, 1916.

WHEREAS, the above named National Bank of Bakersfield, J. K. Russell and J. F. Galtes have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in the above entitled suit by a Judge of the District Court of the United States for the Southern District of California, Southern Division:

NOW, THEREFORE, the condition of this obligation is such that if the above named National Bank of Bakersfield, J. K. Russell and J. F. Galtes shall prosecute said appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NATIONAL BANK OF BAKERSFIELD.
By F. H. HALL,
President.
By J. K. RUSSELL,
Secretary.

[Corporate Seal]

J. K. RUSSELL. (Seal)
J. F. GALTES. (Seal)
W. A. FERGUSON, (Seal)
A. P. EYRAUD, (Seal)
E. D. BURGE, (Seal)
F. H. HALL, (Seal)
Sureties.

State of California,
County of Kern,—ss.

E. D. BURGE, being by me first duly sworn, deposes and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property exempt from execution.

E. D. BURGE.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal] C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

W. A. FERGUSON, A. P. EYRAUD and F. H. HALL, being by me first duly sworn, each for himself, and not one for the other, deposes and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property exempt from execution.

F. H. HALL.
W. A. FERGUSON.
A. P. EYRAUD.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal] C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

Approved this 16 day of Jan., 1917, by

TRIPPET,

District Judge.

O. K. CHASE.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., et al., Defendants. Supersedeas Bond. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

In the District Court of the United States, for the Southern District of California, Southern Division. Hon. Oscar A. Trippet, District Judge.

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,

Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

Praecipe to the Clerk.

TO THE CLERK:

You are requested to take a joint transcript of record, to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to appeals allowed in the above entitled causes (said causes having been tried together), and to include in such transcript of record the following, and no other papers or exhibits, to wit:

1. The names and addresses of attorneys for the respective parties.

2. Citation on appeal with endorsements thereon in A 32.

3. Bill of complaint in A 32.

4. Answer in A 32.

5. Decree in A 32.

6. Assignment of errors in A 32.

7. Petition for appeal and allowance thereof in A 32.

8. Supersedeas bond in A 32.

9. Citation on appeal with endorsements thereon in B 94.

10. Bill of complaint in B 94.

11. Answer in B 94.

12. Amendment to bill of complaint in B 94, together with attached stipulation and order thereon.

13. Answer to amendment to bill in B 94.

14. Stipulation to amend the amendment to the bill of complaint and order authorizing such amendment.

14½. Amendment to bill of complaint in B 94 as amended.

15. Decree in B 94.

16. Assignment of errors in B 94.

17. Petition for appeal and allowance thereof in B 94.

18. Supersedeas bond in B 94.

19. Order denying motions to dismiss bills of complaint in A 32 and B 94.

20. Memorandum opinion of the Court.

21. Stipulation respecting joint transcript and costs on appeal.

22. Praecipe to the clerk for transcript of record.

23. Certificate of the clerk to transcript of record.

24. Stipulation and order enlarging time to file record and docket causes.

25. Statement of the evidence.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendants and Appellants.

Approved:

ERNEST U. SCHROETER,
LUCIUS K. CHASE,
Attorneys for Plaintiff and Appellee.

[Endorsed]: Original. No. A 32. In Equity. B. 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Praecipe to the Clerk. Filed Mar. 2, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. C. L. Claflin, G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In the District Court of the United States, for the Southern District of California, Southern Division. Hon. Oscar A. Trippet, District Judge.

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,

Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

Stipulation Respecting Joint Transcript and Costs on Appeal.

IT IS HEREBY STIPULATED THAT a joint transcript covering both causes above entitled may be prepared and used as the record upon the appeal of said causes from the decrees therein of the aforesaid District Court, and that both said causes be considered in a single set of briefs on said appeals; also that costs on said appeals may follow the decision of the Appellate Court in B 94.

Dated February 26th, 1917.

LUCIUS K. CHASE,
E. U. SCHROETTER,
Attorneys for Plaintiff.
G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendants.

[Endorsed]: Original. Nos. A 32 and B 94 Equity. In the United States District Court, Southern District of California, Southern Division. Wm. H. Moore, Jr., Plaintiff, vs. National Bank of Bakersfield, et al., Defendants. Stipulation Respecting Transcript on Appeal. Filed Mar. 2, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. C. L. Claflin, G. Harold Janeway, Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Deft.

In the District Court of the United States, for the Southern District of California, Southern Division. Hon. Oscar A. Trippet, District Judge.

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,

Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

Stipulation Extending Time.

IT IS HEREBY STIPULATED that appellants may have thirty days additional time, to wit, to and including March 17, 1917, in which to file their joint transcript on appeal in the actions entitled as above,

or the record thereof, and within which to docket said causes with the clerk of the Circuit Court of Appeals for the Ninth Circuit; and that an order enlarging such time in accordance with this stipulation may be made.

Dated February 5, 1917.

LUCIUS K. CHASE,
E. U. SCHROETTER,
Attorneys for Appellees.

So ordered.

Dated February 6th, 1917.

TRIPPET,
District Judge.

[Endorsed]: No. A32 Equity. B94 Equity. In the United States District Court, Southern District of California, Southern Division. Wm. R. Moore, Jr., Plaintiff, vs. National Bank of Bakersfield, et al., Defendants. Stipulation Extending Time. Hunsaker & Britt and Le Roy M. Edwards, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

2957

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Wm. H. Moore, Jr., *Appellee,* **vs.** **National Bank of Bakersfield, et al.,** *Appellants.*	A 32.
Wm. H. Moore, Jr., *Appellee,* **vs.** **National Bank of Bakersfield,** *Appellant.*	B 94.

BRIEF OF APPELLANTS.

WM. J. HUNSAKER,
E. W. BRITT,
G. HAROLD JANEWAY,
Attorneys for Appellants.

Filed
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United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Wm. H. Moore, Jr., *Appellee,* *vs.* **National Bank of Bakersfield, et al.,** *Appellants.*	A 32.
Wm. H. Moore, Jr., *Appellee,* *vs.* **National Bank of Bakersfield,** *Appellant.*	B 94.

BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

The above entitled causes, two in number (A 32 and B 94), were tried together, are presented on appeal by a joint transcript, and are to be considered in a single set of briefs.

A 32.

In A 32 the Trustee of Alfred W. Bannister, bankrupt, seeks to set aside, as being a preference, a trust

deed in favor of certain trustees, executed by said Bannister April 8, 1915, recorded April 23, 1915, and given as security for Bannister's pre-existing indebtedness to the defendant Bank. The involuntary petition in bankruptcy against Bannister was filed May 5, 1915; and the order of adjudication was made May 24, 1915, on Bannister's default. Of the issues framed by the pleadings the following, since they are the subject of consideration hereinafter, should be particularly noted, to-wit:

First: Will the enforcement of said transfer operate to give other creditors of said bankrupt, having allowed claims against the bankrupt estate, a lesser percentage of their debt than said defendant will receive by reason of such transfer?

Second: Did the defendant Bank, at the time of the execution, or at the time of the recordation, of said trust deed, have reasonable cause to believe that such transfer would operate to effect a preference in its favor over the other creditors of said grantor of the same class as said defendant?

B 94.

In B 94 the Trustee seeks to set aside, as being preferences, four chattel mortgages executed and delivered by Bannister to the defendant Bank on the dates, and covering property, respectively as follows, to-wit: December 21, 1914, covering a removable corrugated iron and frame warehouse building on leased grounds at Wyble Siding, Kern county; January 5, 1915, covering a Stutz automobile; January 12, 1915,

covering certain hay and grain particularly described therein; January 12, 1915, covering certain grain hay particularly described therein;—all of which were recorded April 23, 1915; also to have declared preferential certain payments made by Bannister to defendant subsequent to January 4, 1915. The answer denies most of the material allegations of the bill except the jurisdictional facts, and further alleges facts which defendant contends establish an equitable lien upon the mortgaged property in favor of defendant superior to any claim of the Trustee thereto. The answer alleges that, in addition to the chattel mortgages mentioned in the bill, Bannister executed and delivered to defendant other chattel mortgages on the following dates, to-wit: November 11, 1914; December 1, 1914; December 9, 1914; December 21, 1914; January 4, 1915; January 5, 1915; none of which were ever recorded; and which mortgages covered certain specified hay and grain which in the aggregate comprised all the hay and grain described in the "blanket" mortgage of January 12, 1915, mentioned in the bill as Exhibit "A" thereto; that, at the time each of said mortgages was received by defendant, Bannister received from it a loan for the purpose of purchasing certain hay or grain, in consideration of which he executed and delivered to defendant promissory notes evidencing said loans, respectively, and said chattel mortgages securing said notes, respectively, and covering the property to be purchased with the proceeds of said loans; and in each instance agreed to, and thereafter did, remove said property to his Bakers-

field warehouse, and thereupon, on January 12, 1915, executed and delivered to defendant said "blanket" mortgage. On April 23, 1915, defendant recorded the four mortgages referred to in the bill, and thereupon occurred the acts which defendant contended at the trial constituted a taking of possession by it of the mortgaged property. On May 5, 1915, the petition in bankruptcy was filed against Bannister, and between April 23rd and June 24th, 1915, the defendant disposed of the mortgaged property for the net sum of $9381.13, which it applied upon Bannister's indebtedness, $1000.00 of which sum was received by it between April 23rd and May 5th.

Numerous issues are raised by the pleadings, but those considered hereinafter are specified in the following

SPECIFICATION OF THE ERRORS RELIED UPON.

A 32.

The trial court erred:

1. In denying defendants' motion to dismiss the bill, made at the close of plaintiff's case, in that:

(a) It was not shown that the enforcement of the transfer in question would operate to the injury of other creditors of Bannister having allowed claims against the bankrupt estate;

(b) Defendant Bank was not shown to have had "reasonable cause to believe" said trust deed would operate to effect a preference in its favor.

2. In decreeing that said trust deed constituted a preference within the meaning of the United States

Bankruptcy Act, and in declaring said trust deed null and void, in that:

(a) It was not shown that the enforcement of said transfer would operate to the injury of other creditors of Bannister having allowed claims against the bankrupt estate;

(b) Defendant Bank was not shown to have had on either of said dates "reasonable cause to believe" such transfer would operate to effect a preference in its favor.

B 94.

The trial court erred:

1. In denying defendant's motion to dismiss the bill, made at the close of plaintiff's case, in that:

(a) It was not shown that the enforcement of any of the transfers or payments in question would operate to the injury of other creditors of Bannister having allowed claims against the bankrupt estate;

(b) It was not shown that the plaintiff represented creditors as to whom the chattel mortgages in question were void.

2. In decreeing the chattel mortgage of December 21, 1914, covering the corrugated iron and frame warehouse at Wyble Siding, and that of January 5, 1915, covering the Stutz automobile, to be null and void and of no effect.

3. In decreeing the chattel mortgages of January 12, 1915, null and void as to plaintiff, and in holding defendant did not have an equitable lien upon the property covered by the chattel mortgages set forth in the

bill, and the answer thereto, by reason of the transactions by which said mortgages were respectively received by defendant.

4. In overruling defendant's objections to the amendment to the bill herein, taken by way of answer thereto, on account of the insufficiency of its allegation of fact and the uncertainty thereof.

5. In receiving, over the objection of defendant, testimony in support of the allegations of said amendment to the bill herein, which evidence, in substance, was the testimony of Bannister to the effect that on certain dates, not specified in the amendment, he incurred certain indebtedness, the amounts of which items and the names of which creditors and the proof of which claims against the bankrupt estate are not alleged in said amendment.

6. In decreeing, in spite of the errors assigned, that defendant pay plaintiff the sum of $9381.13, with legal interest from July 10, 1915.

BRIEF OF THE ARGUMENT.

I.

A Deficiency of Assets of the Bankrupt Estate to Satisfy Proven Claims Not Shown.

An error common to, and which should be decisive of, both appeals was the action of the trial court in denying in both cases the motions of the defendants to dismiss the bills therein; also in permitting any recovery in either case; for it was not shown that the enforcement of any of the transfers in question in either

case would operate to the injury of any other creditor of Bannister having a proven claim against the bankrupt estate.

It is well settled that the Trustee, in order successfully to maintain either of these actions, must sustain the burden of showing that the enforcement of the alleged preferences he seeks to avoid will result in other creditors of the bankrupt whom he represents, of the same class as defendant, receiving a lesser percentage of their claim than the defendant Bank will receive by reason of the alleged preferences (1 Remington on Bankruptcy, par. 1768, Supp., par. 1403½).

> Tumlin v. Bryan, 165 Fed. 166:
>
> "The burden of proof is on the complainant, and, unless he shows by sufficient evidence the elements of a voidable preference, he is not entitled to recover. He must prove that * * * 4th. The creditor receiving the payment was thereby enabled to obtain a greater percentage of his debt than other creditors of the same class."
>
> 165 Fed. 167.

The trustee represents only those creditors who have proven their claims against the bankrupt estate in the manner provided and required by the bankruptcy law.

> Leavengood v. McGee, 91 Pac. 453, 50 Ore. 233:
>
> "But a method is provided by the procedure in bankruptcy whereby the claims of creditors may be legally adjudicated, and before the trustee should be permitted to attack by a suit in equity the conveyance of the bankrupt, he shall allege

> and prove by the record of the referee that such procedure has been followed, and that the claims on which he bases his contention have been ascertained and established."
>
> 91 Pac. 455.

The record on these appeals is devoid of evidence of the existence of *any allowed claim* against the bankrupt estate. It does not appear but that the trustee has sufficient property in the estate with which to fully discharge every allowed claim; and, as this court said (Ross Cir. Judge) *In re* Flatland, 169 Fed. 310:

> "Upon the merits, it is plain that resort cannot be had either by court or counsel to anything outside of the record."
>
> 196 Fed. 311.

Bannister's schedule was received in evidence [Tr. p. 156], and he testified [Tr. p. 156], "The schedule of my assets and liabilities which I signed and verified correctly sets forth the various items of indebtedness which I incurred between the 12th of January, 1915, and the 23rd of April, 1915, and the dates when incurred, and those items were all unpaid at the time this schedule was filed, on June 2nd, 1915."

Such evidence (and there was no other) was not proof that any of said creditors had established their claims against the bankrupt estate. At most, it amounted merely to a statement that at the time the schedule was filed there were certain accounts which *Bannister* considered outstanding and unpaid. It was not proof that any of the items were legal obligations of the bankrupt estate, or that the referee had allowed,

or ever would allow, them as approved claims against the bankrupt estate. For all that appears, there might have been any one of a number of reasons why the referee would, and did, refuse to allow all of the alleged debts scheduled. As was said in Crary v. Kurtz, 119 Am. St. 549, 132 Ia. 105:

> *"That outstanding obligations exist is not enough.* Unless these are established and allowed, as authorized by statute or the act of Congress, he [the trustee] has no authority to pay them from moneys that may come in his hands, to say nothing of the property the debtor has transferred to others. * * * Section 57 of the Bankruptcy Act * * * provides for the proof, adjudication and allowance of the claims of creditors, and section 65 * * * directs the declaration of dividends 'on all allowed claims.' Where no claims are allowed, there are no dividends to be paid by the trustee, and therefore no occasion to interfere with property in the hands of third persons. * * * Because of the omission to prove that any claims had been established against the estate, the decree of the district court must be, and is, reversed."
>
> 119 Am. St. 555. (Italics ours.)

In order to sustain the burden of proving that the enforcement of the transfers sought to be avoided will operate to the injury of some creditor whom he represents, the Trustee must not only show that claims have been filed and proved against the bankrupt estate, but he must also show the aggregate of such claim and that the amount of the assets of the estate is such that the defendant Bank will, by reason of the transfer sought

to be avoided, receive on its claim a larger percentage than the creditors whom the Trustee represents will thereby receive on their proven claims. In Lesser v. Bradford Realty Co., 95 N. Y. Supp. 933, it was said:

> "It has been directly held that the trustee's right to maintain such an action as this depends upon the fact that he has not sufficient assets in his hands to satisfy the claims of the creditors; the reason for the rule being that, since the transfer is good as between the parties to it, the transaction should not be set aside at the instance or for the benefit of third parties, unless it is necessary that they be heard in the interests of substantial justice. As was said in Mueller v. Bruss (Wis.), 8 Am. Bankr. Rep. 447, 88 N. W. 232:
>
> 'The trustee has no right superior to that of the creditors he represents. If we admit that the facts stated show such transfers to have been fraudulent, still no right to avoid them exists, unless it appears that some one was harmed. It seems quite evident, without argument, that, unless it is made to appear that the property so conveyed is needed to pay the claims filed against the debtor, the trustee has no right to set such conveyances aside.'
>
> Directly to the same effect is the case of Deland v. Miller & Cheney Bank (Iowa), 11 Am. Bankr. Rep. 744, 93 N. W. 304, and I do not find that the rule stated in these cases has ever been questioned."
>
> 95 N. Y. Supp. 933-934.

The record does not disclose the amount of the assets of the bankrupt estate; and there is no evidence as to what property the Trustee actually received or re-

covered, nor its valuation, nor what he realized or could realize thereon out of which to pay allowed claims. In the absence of proof of either the assets or obligations of the bankrupt estate, it was impossible for the court to determine that the creditors, if any, of the bankrupt estate would be injured by the enforcement of the transfers sought to be avoided. Evidence as to what property Bannister claimed to have possessed at or previous to the time he filed his schedule (even if it be some evidence upon the issue of his solvency at those times) was not proof or evidence of the amount of assets that came into the possession of the Trustee, either from the bankrupt or by recovery from third parties; nor was evidence concerning the value of Bannister's property on April 8 and April 23, 1915 (to which dates only was the evidence concerning valuations addressed), either evidence or proof of the value of the assets of the bankrupt estate, or of the amount realized thereon by the Trustee out of which to pay allowed claims; nor evidence or proof of the amount of the assets of the estate at the time the transfers were sought to be avoided, to-wit, when the complaints herein were filed, nor at the time of trial.

The failure of the Trustee to sustain the burden of proving the essential element of a voidable preference to which we have referred should, of itself, resolve these appeals in favor of appellants, irrespective of the other errors assigned; to a consideration of which we will, however, proceed.

II.

The Existence of the Element of "Reasonable Cause to Believe" was Not Established.

Another of the assigned errors common to both appeals was the failure of the Trustee to sustain the burden of proving that the defendant Bank, at the time of the execution, or at the time of the recordation, of the trust deed sought to be avoided in A 32, and at the time of the commission of the alleged preferences sought to be avoided in B 94, had reasonable cause to believe that such transfers would operate to effect preferences in its favor over the other creditors of Bannister of the same class as defendant Bank.

The burden of proof is upon the Trustee to establish the elements of an alleged preference. *In re* Gaylord, 225 Fed. 234, 239-40, it was said:

> "The burden of proof is on the trustee alleging the invalidity or voidability of the transfer. 2 Remington on Bankruptcy (2d Ed.), sec. 1404, p. 1285; Calhoun County Bank v. Cain, 152 Fed. 983, 82 C. C. A. 114, 18 Am. Bankr. Rep. 509. He must prove the insolvency of the debtor, later bankrupt, at the time the security was given. He must establish the existence of other creditors of the same class at that time, and that the enforcement of the security or transfer will operate to give them a lesser percentage of their debt than the secured creditor will receive by reason of his security given by such debtor, and he must also prove the existence of the 'reasonable cause to believe.' "

This element of "reasonable cause to believe" must be established by a fair preponderance of all the evidence in the case, for there is a presumption of fair dealing which will sustain the transfer "if two preferences of substantially equal weight may reasonably be drawn from the proved facts." *In re* Gaylord, *supra,* page 240, it was said:

> "All this must be done by a fair preponderance of all the evidence in the case, and where inferences from proved facts are to be drawn, the rule obtains that if two inferences of substantially equal weight may reasonably be drawn from the proved facts, then that inference shall prevail which sustains the transfer or security."

There is an entire failure of proof of the existence of such "reasonable cause to believe" at any of the times in question, to-wit, April 8, 1915, when the trust deed was received, April 23, 1915, when the trust deed and the mortgages on the automobile and the Wyble warehouse were recorded, or at any time previous to the filing of the petition against Bannister, on May 5, 1915. The evidence as to the alleged insolvency of Bannister, and the asserted knowledge thereof on the part of the defendant Bank, relates only to the period subsequent to April 1, 1915, and is confined to the testimony of Bannister and of Russell, the defendant's cashier. A fair summary of this testimony is as follows:

All dealings between Bannister and the defendant Bank respecting the transactions in question were conducted through Russell, the cashier [Tr. pp. 148, 186]; hence the only information acquired by the defendant

Bank concerning Bannister's financial condition was acquired through Russell; what Russell knew in that regard is to be determined from his testimony as to what he knew and heard, and that of Bannister as to what he told Russell.

Russell testified [Tr. p. 234] he had known Bannister to be one of the best customers of the old Bank of Bakersfield, of which Russell had been cashier [Tr. p. 235]; and when the defendant Bank was organized he solicited Bannister's business, and finally secured him as a customer in November, 1914 [Tr. p. 234.] When the first loan was made it was arranged that their transactions should be carried on in the same manner they had formerly been carried on in the old Bank of Bakersfield [Tr. p. 235], where loans had been made to Bannister, secured by unrecorded chattel mortgages on his stock-in-trade, even before Russell had any connection with that bank [Tr. p. 235]. In short, the arrangement then made, November 2, 1914, and later carried out in their subsequent transactions, was identically the same as that previously pursued by the same parties for a number of years, and found unobjectionable, and which was not known by them to be subject to legal objection [Tr. pp. 245, 246]. Subsequent to November, 1914, Russell became familiar with the condition of Bannister's Bakersfield business, and considered him well fixed financially on April 8, 1915 [Tr. p. 238], and knew that his assets at that time and on April 23, 1915 [Tr. pp. 239-240], consisted of [Tr. pp. 238-9] the Bakersfield warehouse property, which Russell, after investigating its value, considered to be well worth $20,000.00 (the Security Trust Company had a

loan of $14,000.00 on it [Tr. p. 239], and the old Bank of Bakersfield had appraised it at that amount, and its value had increased since then [Tr. p. 249]); two acres at Bannister Siding (including warehouse and private switch, for which Bannister paid $1500.00 [Tr. p. 239]), worth $2000.00; corrugated iron and frame warehouse on leased ground at Wyble Siding, worth $1000.00; twenty acres on San Emidio Ranch, worth $200.00; Stutz automobile, worth $1000.00; hay and grain, mortgaged to defendant Bank for $10,000.00, worth $15,000.00 (Russell was familiar with market value of hay and grain [Tr. p. 235] and aimed to loan Bannister not to exceed seventy-five per cent of its market value [Tr. p. 237]; the market price of it dropped subsequent to April 23 [Tr. p. 250]); and his Hollywood home, which Russell had not seen, but which Bannister told him was worth $12,000.00—a total of $51,200.00, exclusive of his interest in the Los Angeles Hay & Storage Company (the extent of which was unknown to Russell [Tr. p. 240]), and his claim against said company of approximately $17,000.00 (which he told Russell he expected to realize on [Tr. p. 240]). Bannister's liabilities on April 8 and 23, 1915, so far as known to Russell, were [Tr. p. 239] $14,000.00 to Security Trust Company, $10,000.00 to defendant Bank, and that owed various farmers around Bakersfield for hay and grain purchased, not exceeding in the aggregate $4000.00;—a total of $28,000.00.

Nor does Bannister's testimony as to what he told Russell during the period in question respecting his financial condition materially alter the foregoing sum-

mary. There is no evidence that Bannister ever discussed with Russell (nor that Russell knew anything about) any portion of his indebtedness other than that to the Bakersfield creditors above named, and his difficulties with the Los Angeles Hay & Storage Company. The Bakersfield creditors known to Russell have been mentioned; and the record shows the affairs of the Los Angeles concern were mentioned in two conversations between Russell and Bannister as to which Bannister testified. In giving his testimony before the referee and at the trial, Bannister was noticeably uncertain and indefinite, both as to whether he had the second conversation with Russell respecting the affairs of the Los Angeles company previous or subsequent to April 23rd, and as to what was said at those conversations. In testifying before the referee he stated [Tr. p. 130] he returned to Bakersfield immediately after his first interview with the officers of the Los Angeles concern, but didn't know when he next saw Russell and didn't explain to him what had occurred in Los Angeles, and didn't see him on April 23rd, as he (Bannister) was then in Los Angeles. At the trial he stated [Tr. p. 147] the Bank didn't know, prior to April 23rd, of any trouble with the Los Angeles concern, as things had been going satisfactorily subsequent to his trip to Los Angeles, early in April; and [Tr. p. 148] that "sometime in April probably" he told Russell he couldn't get the money on his claim against the Los Angeles company, and was waiving his claim. Later [Tr. p. 164] he stated he had no recollection of talking to Russell on April 23rd, but probably mentioned to him that he

had to go to Los Angeles about the attachment on his house, though he didn't remember. Subsequently he stated [Tr. pp. 183-4] that he first learned the mortgages had been recorded subsequent to their recordation and upon his return from the second meeting at Los Angeles respecting the affairs of the Los Angeles company. It should be noted, however, that both before the Referee [Tr. p. 137] and at the trial [Tr. p. 218] he did state that, whenever it was he had the conversations with Russell, he told him that arrangements to enable the Los Angeles concern to pay its creditors, including Bannister, were proceeding satisfactorily. There is considerable doubt as to whether he ever told Russell of the details of the arrangement respecting the Los Angeles concern [Tr. pp. 140, 142, 240]. The arrangements referred to were [Tr. pp. 181-2] that the Los Angeles concern was to be handled by certain trustees, with Mr. Flory as manager (who was one of the oldest men in the hay business in Los Angeles) and all creditors, including Bannister, were to grant an extension of time in the payment of their claims; which arrangements had received the approval of the most insistent creditors of the company, and were being carried forward when Bannister returned to Bakersfield and had his talk with Russell about it, the forepart of April. The creditors of the Los Angeles concern continued to sign up for the trustee arrangement proposed until within eight or nine hundred dollars of all the claims against the concern had been signed up [Tr. p. 137] and then (April 21, 1915) Wells attached Bannister's Hollywood home and [Tr. p. 163], in response to a letter from

his wife, Bannister went to Los Angeles the next day. It is doubtful whether he mentioned the attachment to Mr. Russell before going to Los Angeles; for he stated at the trial that he didn't recollect whether he did or not [Tr. p. 164]; and Russell stated [Tr. p. 241] that Bannister informed him of the attachment upon his return from Los Angeles, after the mortgages had been placed of record. Bannister further stated [Tr. p. 183] that he was not in Bakersfield the day the mortgages were put of record, but in Los Angeles, and [Tr. p. 184] when he first learned of their recordation they had already been put on record. Upon his return from Los Angeles on this occasion, after the attachment and the failure of the trustee plan of financing the Los Angeles company, and after the recordation of the trust deed and mortgages, he still maintained to Russell [Tr. p. 242] that he was solvent though they were trying to put him in insolvency; and no doubt he honestly thought so; for at that time he did not know he was responsible for a stockholder's liability in the Los Angeles concern, and did not find that out until the petition in involuntary bankruptcy was filed, on May 5 [Tr. pp. 182-3].

Up to the time the mortgages and trust deed were placed of record by Russell, on April 23, 1915, the record shows that, according to the knowledge possessed by Russell of Bannister's affairs, and the information communicated to him by Bannister, Bannister's assets exceeded his liabilities by $23,200.00, exclusive of his claim of $17,000.00 against the Los Angeles concern, at least a portion of which Bannister expected to realize, and had so informed Russell [Tr. pp. 137,

184, 240]. So that, even though Russell had been fully informed of the condition of affairs of the Los Angeles concern, and of Bannister's liability for the debts thereof, his information would still have shown Bannister solvent by a very considerable margin. None of the items of indebtedness scheduled by Bannister [Tr. pp. 156-160], other than those to the Bakersfield creditors already mentioned, were shown to have been known to Russell at any time; in fact, the contrary was the case [Tr. p. 240].

Russell testified [Tr. pp. 240-241] he recorded the trust deed and mortgages on the afternoon of April 23, after the Bank had closed; (the indorsement upon the trust deed and mortgages shows that they were recorded at 4:15 p. m., April 23, 1915 [Tr. pp. 86, 117]). This action was occasioned by his meeting several people on the street in Bakersfield, subsequent to banking hours, who stated they understood Bannister was in financial trouble in Los Angeles. Upon inquiry, he learned that the rumor had been started by one Long, a hay and grain merchant who was a competitor of Bannister; but he did not then know nor then discover the extent of Bannister's interest in the Los Angeles concern, nor the effect, if any, of this trouble upon Bannister's credit at Bakersfield [Tr. p. 241]. Even though he had then known or discovered the exact extent of Bannister's liability in the Los Angeles concern, Bannister would still, according to Russell's information and knowledge, have been solvent by a considerable margin. The only evidence of the condidition of the Los Angeles concern was Bannister's statement [Tr. p. 143] that he thought its liabilities,

including his $17,000.00 claim, exceeded his assets by $28,000.00; in which event Bannister's liability, after deducting his claim (he owning about sixty per cent of its stock [Tr. pp. 135-136]), could not exceed $6600.00, so that, according to Russell's information, he would even then have been far from insolvent.

Such, in substance, was the showing which appellants contend falls far short of sustaining the Trustee's burden of proving in either case the existence on the part of the defendant Bank of the element of "reasonable cause to believe," at any of the times in question; for that element must be established by "a fair preponderance of all the evidence in the case."

III.

The Mortgages of December 21, 1914, and of January 5, 1915, Covering the Wyble Warehouse Building and the Stutz Automobile, Respectively, were Not Void.

Plaintiff contends, and the trial court held [Tr. p. 125] that these mortgages were void as to the Trustee, because they were not recorded within a reasonable time after their execution. Such is not our understanding of the law applicable to the facts under consideration.

Each of these mortgages covered mortgageable property, was given for a valuable present consideration [Tr. pp. 152, 193], and both were recorded April 23, 1915, prior to the bankruptcy proceedings.

It is well settled that the courts of the United States are bound by the construction placed upon state statutes by the highest state court; and this rule is applicable

to the construction of recording acts. In Sturdivant Bank v. Schade, 195 Fed. 188, it was said:

> "On the question whether under the statute of a state an unrecorded deed to real property is valid as against creditors of the grantor, the federal courts in bankruptcy are bound by the decisions of the highest courts of the state."
>
> Syll. 9 p. 190.

In California the recordation of a chattel mortgage is a substitute for the mortgagee's possession thereunder. (Berson v. Nunnan, 63 Cal. 550, 552.) The fact that the mortgages in question were not recorded until April 23, 1915, does not render them absolutely void. They can be avoided *only* by, and in the interest of, those creditors, if any, of Bannister who became such between the execution and the recordation of the mortgages; and when the trustee in bankruptcy of the mortgagor seeks to avoid them he must show that he represents creditors whose claims have arisen intermediate the execution and recordation of the mortgages, and that those claims have been established against the bankrupt estate. Such we understand to be the law of California.

In Ruggles v. Cannedy, 127 Cal. 290, the supreme court of California held a chattel mortgage not recorded within a reasonable time after its execution void as to those creditors of the mortgagor who became such between the execution and the recordation of the mortgage, and who had established their claims by having them proved and allowed in the insolvency court. In a strong dissenting opinion in that case Jus-

tice Garoutte clearly shows that such a mortgage is not void as to creditors existing at the time of its execution.

> "Yet it is not even claimed here that this mortgage is void as to creditors existing at the time it was executed, and no such claim can be made, for then the whole superstructure of the court's reasoning, builded story after story upon the theory of the creation of a false credit in the mortgagor and a public policy opposed to secret liens, would come down with a crash; for, as to creditors in existence prior to the execution of the mortgage, there would be no false credit in the mortgagor and no secret lien in existence at the time their debts were created."
>
> 127 Cal. 310.

And later, in the case of Summerville v. Kelliher, 144 Cal. 155, the supreme court held that such a mortgage was not void either as to creditors existing at the time of its execution nor as to creditors who became such subsequent to its recordation. An examination of the opinion in Summerville v. Stockton Milling Co., 142 Cal. 529, referred to in the opinion in Summerville v. Kelliher, *supra;* discloses that the judgment upon which the execution sale referred to in Summerville v. Kelliher was made, was obtained on November 1, 1897, and was assigned to Summerville, so that the indebtedness sued on was necessarily incurred prior to October 16th, 1899, the date of the execution of the mortgage sought to be avoided in Summerville v. Kelliher, which mortgage was held valid both as to Hersom, the trustee in bankruptcy of the mortgagor, who was appointed subsequent to the recordation of the mortgage, and as

to Summerville, the prior creditor. In Summerville v. Kelliher, *supra,* the California supreme court, in refering to Ruggles v. Cannedy, *supra,* said:

> "The mortgage was not void from the delay of fifteen days in recording it. No rights were acquired, nor was any prejudice suffered by either Summerville or Hersom during the interval between the date of execution and the date of recording. Ruggles v. Cannedy, 127 Cal. 290, has no application. In that case there was a delay of more than six months in recording the chattel mortgage. In the meantime credit had been extended to the mortgagor, and it was against the creditors thus misled that the mortgage was declared void because of the delay. No such conditions appear here."
>
> 144 Cal. 157.

The authorities just cited, and the quotation hereinbelow made from the opinion in Ruggles v. Cannedy, *supra,* show that the mortgages in question here can be avoided only by, and in favor of, those creditors, if any, whose claims arose intermediate the execution and recordation of the mortgages, and who have established their claims against the mortgagor by judgment, attachment, or otherwise. (Ruggles v. Cannedy, 127 Cal. 290. Italics ours):

> "This action is brought by the assignee in insolvency of one Wilgus, seeking a decree declaring void against creditors a chattel mortgage executed by Wilgus to defendant Cannedy. * * * *Intermediate the time of giving and the time of recording the mortgage Wilgus incurred debts,* some of which *were proved and allowed in the insolvency court.* The creditors knew nothing of

the mortgage until its recordation. The court, at the suit of the assignee, under the facts adjudged the mortgage to be null and void *as to these creditors.* * * * But this, it is to be noted, does not mean that such a mortgage between the parties, and as to all the world, is absolutely void, like an unrecorded builder's contract under the mechanic's lien law. It does mean, however, that it may be avoided at the instance of anyone in the enumerated classes—creditor, purchaser, or incumbrancer—*whose right accrues during the time the recordation is withheld.* Between the parties, the unrecorded mortgage is, of course, valid. It is likewise valid against any creditor, purchaser, or incumbrancer whose claim arises after recordation. * * * Of course, it is true in general that *a creditor at large of the mortgagor cannot set aside a mortgage for lack of recordation,* any more than can such a creditor set aside a sale void for want of immediate delivery. *He must come first with his judgment-lien, execution levy, attachment, or some other process or right by which he has acquired a specific interest in or claim upon the particular property.* But since, as has been discussed, he may acquire this lien or right after recordation, and since, when acquired, the mortgage is void as to him, it makes little difference whether it be stated as the rule that the law requires immediate recordation, or whether it be said that, while it does not require immediate recordation, the mortgage is void as to creditors *who have become such during the time recordation has been delayed.* It is but a change in the form of words, while all of the legal effects remain the same. * * * Or, taking it in the other view which has been presented, even if it be said

that the law does not require immediate recordation, still the mortgage is void as to those who during the time that the mortgage has been withheld from the records have given credit to the mortgagor, and it is *in favor of these that the mortgage has been set aside.*"

127 Cal. 293-306.

The situation presented by the facts in Ruggles v. Cannedy is not that presented by the record on these appeals. As the Trustee failed to show that any of the creditors scheduled by Bannister had proven their claims before the Referee, he necessarily failed to show that any creditor whose claim accrued intermediate the execution and recordation of the mortgages in question had done so.

Since a chattel mortgage not recorded within a reasonable time after its execution is, under the law of California, void only as to those creditors whose claims have arisen intermediate the execution and recordation of the mortgage, reason dictates, and the authorities hold, that, in an action to avoid such a mortgage, prosecuted by the trustee in bankruptcy of the mortgagor, the Trustee must show that he represents such creditors, and that their claims have been allowed in the bankruptcy court. To this effect is the decision of this court *In re* Flatland (per Ross, Cir. Judge, 1912), 196 Fed 310, where the trustee contended that because, by reason of the amendment of 1910 to section 47a of the Bankruptcy Act, he had in such action all the rights of a creditor possessing a levy upon the property in controversy, the lien of a chattel mortgage would not be valid against him if for any reason it

be invalid as against a claim of a levying creditor. This contention the court answered, dismissing his petition for a revision of an order sustaining the chattel mortgage in question, because the record did not show that the trustee represented any creditor as to whom the mortgage was void; the court saying (page 312):

> "A conclusive answer to the suggestion here made is that there is nothing in the record showing that any of the creditors of the bankrupt other than the respondent held any lien of any character."

Similarly, in the case at bar the contention of the Trustee that the mortgages in question are void as to him because not recorded within a reasonable time after their execution, is conclusively answered by the fact that there is nothing in the record showing that he represents any creditor as to whom the mortgages in question are void; such creditors (as the supreme court of California has held in the cases cited *supra*) being only those whose claims arose while the mortgages were withheld from the record, and whose claims were proved and allowed in the bankruptcy court. To the same effect is the decision in Sparks v. Weatherly, 176 Ala. 324, 58 So. Rep. 280, where the court construed the amendment of 1910 to section 47a, and it was stated:

> "A trustee in bankruptcy who sues in a state court to reach land sold by the bankrupt prior to the adjudication in bankruptcy, on the ground that the conveyance is void under Code 1907, section 3383, providing that conveyances are void as to judgment creditors without notice, unless

recorded before the accrual of the right of such judgment creditors, must show that he has or represents a judgment creditor with a lien and without notice."

Syll. 1, 58 So. 280.

Also *In re* Stern (Ohio, 208 Fed. 488), where, after quoting from the amendment of 1910 to section 47a, the court says:

"Our view of this latter provision is that the trustee represents the several creditors, under this language, with varying powers and opportunities, appropriate to the different status of the several creditors. He is, with respect to each of the five creditors holding accounts for merchandise going into the stock and becoming part of the stock of goods, in the position of a creditor holding a judgment rendered for the purchase price and, with respect to the several other creditors, a judgment creditor with the limitations inherent in the nature of their several claims."

208 Fed. 490.

IV.

The Various Chattel Mortgages Upon Bannister's Stock In-Trade were Not Void, but Constituted Equitable Liens in Favor of Defendant Bank Superior to the Trustee's Title.

The chattel mortgages, both recorded and unrecorded (other than those covering the Wyble warehouse building and the Stutz automobile, which have been considered elsewhere), were received by defendant Bank under the following circumstances:

During the period of time in question Bannister was purchasing hay and grain from the farmers around Bakersfield, and needed funds to advance them to aid them in harvesting their crops, and later to pay them the balance of the purchase price [Tr. pp. 151, 152, 153, 154]. He, therefore, applied to the defendant Bank for loans from time to time for that purpose, stating to Russell, the cashier, at the time he applied for the loans, why he desired the funds, and that he would mortgage to the Bank as security therefor the property purchased by the loans [Tr. pp. 187, 189, 191, 192]. Upon that understanding the loan in each instance was made, the property purchased with the loan, and, as a part of the same transaction, was mortgaged to the defendant Bank. In the instances where the property had not been moved to Bannister's warehouse at the date of the loan, it was agreed at the time the loan in question was made that as soon as the property was removed to the warehouse a blanket mortgage would be given on all of it, which was done on January 12, 1915, pursuant to the previous conversation to that effect [Tr. pp. 188, 237]. In some instances Russell went out and looked at the grain before making the loan [Tr. pp. 190, 236], and in other instances he was already familiar with it [Tr. p. 236]; and when the blanket mortgage of January 12 was taken, he went down to the warehouse with Bannister, and checked over the property described in the mortgage, and identified it [Tr. p. 237, 238]. At the time each of these loans was made Bannister did not have funds with which to make the purchase in question other than by securing these, or similar, loans [Tr. pp. 189, 191,

192]. Subsequent to the giving of the blanket mortgage on January 12, and prior to April 23, shipments may have been made out of the mortgaged property [Tr. pp. 195, 196], but were immediately replaced by other similar property of the same amount [Tr. pp. 194-5, 200-201], and the proceeds of any of such sales, less the expenses incident thereto, were paid to the Bank and applied on his indebtedness [Tr. p. 201]. In other words, the mortgages were in the nature of purchase money mortgages, because the property in controversy would never have become Bannister's property at all had it not been for the money advanced to him by the defendant Bank, which was advanced in reliance upon his agreement to mortgage the property purchased by those funds, as security for the loans, and that agreement was carried out, so far as it was practicable for the parties to do so; the property in question being identified in detail in the various mortgages, and particularly in that of January 12; and at the time that mortgage was given the property described was checked over and identified by the parties as being then in the warehouse. And thereafter no sales were made out of the mortgaged property but what were replaced by other similar property of a like amount; and the proceeds of any of those sales, less the expenses incident thereto, were applied on Bannister's indebtedness to the defendant Bank.

Under such circumstances the equities of the situation are clearly all in favor of the defendant Bank, for the Trustee is attempting to recover property, or the proceeds thereof, which was acquired, and only could have been acquired, by Bannister by reason of

the defendant Bank's loans; hence, so far as the creditors, if any, whom the Trustee may represent (other than those who extended Bannister credit intermediate the execution and recordation of the mortgages) are concerned, they are in no worse position by reason of the enforcement of these mortgages as valid equitable liens than they would have been had the transactions in question never occurred; and as to the existence of creditors with proven claims, whose claims arose intermediate the giving and recordation of these mortgages, the record on these appeals is silent, as has been heretofore shown.

A distinction, made by the decisions, should be noted between the case where the property sought to be mortgaged is the *very product* of the advances sought to be secured thereby, and that where it is not. In the first case (as in B 94) an equitable lien is created (though the mortgage may be void as a statutory mortgage for noncompliance with the statute), which is good, irrespective of possession taken by the mortgagee, against all but bona fide purchasers for value and without notice and those creditors only who can show that they made advances relying upon the property being unincumbered. Examples are: Hurley v. Atchison etc. Ry. Co. (213 U. S. 126), where the railroad company had made an advance payment for coal to be mined in the future, to enable the coal company to pay for the labor of mining the coal; and the court held the advances to be a pledge of the coal, and that the trustee in bankruptcy took the mine subject to the obligation to deliver the coal as mined, to the extent

of the advances; and this irrespective of possession by the railroad company; the court saying (page 132):

> "It is settled that a trustee in bankruptcy has no equities greater than those of the bankrupt, and that he will be ordered to do full justice, even in some cases where the circumstances would give rise to no legal right, and, perhaps, not even to a right which could be enforced in a court of equity as against an ordinary litigant. Williams' Law of Bankruptcy (7th Ed.) 191. Indeed, bankruptcy proceeds on equitable principles so broad that it will order a repayment when such principles require it, notwithstanding the court or the trustee may have received the fund without such compulsion or protest as is ordinarily required for recovery in the courts either of common law or chancery."

In re Flatland, *supra*, where this court, quoting from the foregoing decision of the United States Supreme Court, held a chattel mortgage on a stock of goods and fixtures of a merchant, which were the product of the money sought to be thereby secured, to be valid against the trustee without the mortgagee having taken possession previous to bankruptcy. In the same class is the case at bar (B 94), where the property sought to be mortgaged was the product of the money sought to be thereby secured, and was by the parties intended to be so secured. *In re* Grainger (160 Fed. 69, per Ross, Cir. Judge) this court went even further in sustaining as against the trustee a chattel mortgage upon property which was not the product of the money sought to be thereby secured and where the mortgage was void as a statutory mortgage (covering property

not permitted by statute to be mortgaged), and possession was not attempted to be taken by the mortgagee.

In such cases as those instanced the court is loath to permit the intentions of the parties (honestly expressed at the time of the transaction in question) to be defeated by a trustee in the interests of general creditors who have not been injured by the transaction or who have not been as diligent as the defendant in protecting their claims, and particularly where the property sought to be mortgaged is the product of the money advanced by the defendant, which would not otherwise have been advanced. As was stated *In re* Automobile Livery Service Co., 176 Fed. 792 (Ala. 1910):

> "There is always a strong equity in favor of a lien by one who advances money upon the property which is the product of the money so advanced. This was what the parties intended at the time, and to this, as already stated, there is and can be no objection in law or in morals."
>
> (Quoting Sabin v. Camp, 98 Fed. 974.)
>
> 176 Fed. 795.

In re Chantler, 151 Fed. 952, the court said:

> "* * * as a court of bankruptcy acts upon principles of equity, it must be held, *irrespective of whether the mortgagee took possession under the mortgage,* that an equitable lien arose in favor of the mortgagee upon the after-acquired property, which was for a present consideration and therefore not invalid as to creditors, and that the lien of the mortgage attaches to the proceeds of the sale of after-acquired property as well as to the proceeds of property in the bankrupt's possession at the date of the mortgage."
>
> 151 Fed. 953.

The mortgages in question are unquestionably good as equitable liens as against Bannister and all creditors except those who made advances subsequent to the execution of the mortgages in question, and prior to the taking of possession thereunder by the defendant Bank, or the intervention of bankruptcy, and creditors who, prior to bankruptcy, actually fastened on the particular property by attachment or execution; and the mortgages may be good even as to the latter class, for it has been held (Pac. Bank v. Coats, 205 Fed. 618, 626; Love v. S. N. etc. Co., 32 Cal. 639, 653) that an attaching or execution creditor's lien is subject to a prior equitable lien since an attachment or execution reaches only the actual and not the apparent interest of the debtor. As has been observed, the record is silent as to the existence of the former class of creditors; and as to the latter, it affirmatively appears [Tr. p. 186] that when bankruptcy intervened no creditor, other than defendant, had fastened on the property in question, and no action was pending, and no judgment had been secured against Bannister, and no attachment had issued against him other than that of Wells, who had attached his Hollywood home [Tr. p. 165], which is not the subject of controversy in these appeals.

The trial court decided [Tr. p. 126] that the defendant Bank did not have an equitable lien upon the property in question, for the supposed reasons that the property was not capable of being mortgaged, that the defendant did not go into possession of the goods prior to the intervention of bankruptcy, and that there was a substitution of the mortgaged goods. The decision of the learned trial court in the premises is

contrary to the decision of this court in the Grainger case (*supra*), where the mortgage in question was held valid as an equitable lien as against the general creditors, represented by the Trustee, in spite of the existence of the very circumstances upon which the trial court in this case (B 94) based its decision. In the Grainger case the mortgage in question was invalid as a statutory mortgage, because it was given upon property which the code did not permit to be mortgaged, including the stock-in-trade of the mortgagor. Such is the situation in the case at bar. In the Grainger case no attempt was made by the mortgagee to take possession of the property prior to the intervention of bankruptcy proceedings, and the property all came into the possession of the Trustee and was by it sold; whereas in the case at bar the defendant Bank did attempt, prior to the intervention of bankruptcy proceedings, to take possession of the mortgaged property (and, as defendant contended at the trial, succeeded in so doing), and disposed of all the property under authority given in the mortgages in question. In the Grainger case the mortgage in question was given on June 1, 1906, and the mortgagor continued to do business until the 9th of August, during which time there was necessarily a substitution and confusion of goods, so far as his stock-in-trade was concerned which was covered by the mortgage in question; and there does not appear to have been any attempt to segregate the property intended to be mortgaged, nor to maintain the bulk and character of the mortgaged property, which, however, was done in the case at bar.

In the Flatland case *(supra)* the effect, upon a transaction giving rise to an equitable lien, of the amendment of 1910 to section 47a of the Bankruptcy Act was considered and decided adversely to the Trustee's contention; and the decision in the Grainger case *(supra)* has not been affected by that amendment; for that amendment has not altered the law of California respecting either the character of chattels that may be mortgaged, or the necessity for the recordation of such a mortgage, or the necessity for the mortgagee to take possession thereunder, or the rights of the various classes of creditors as affected by the existence of an equitable lien or by a failure to comply with the recording statutes. That amendment simply gives the Trustee the rights of the creditors he represents, leaving it to the particular state to determine what those rights may be; and the Trustee cannot recover herein for he has not proved that he represents creditors as to whom the transfers in question are void under the law of California.

V.

Defendant's Objections to the Amendment to the Bill in B 94 Should have been Sustained.

The amendment in question in substance alleged [Tr. p. 91] that at the time Bannister was adjudged bankrupt he had various creditors other than defendant, many of whom held unsecured claims, certain of which were incurred between January 12 and April 23, 1915, and certain of which were incurred prior to January 12. The objections to said amendment were taken by

way of answer thereto and to the bill as thus amended [Tr. pp. 87-88], on account of the fact that the allegations of said amendment were mere conclusions, and because of certain specified uncertainties thereof, to-wit, that the amendment did not disclose what creditors Bannister had on May 24, or the class of said creditors, if any, or the amounts of their respective claims, if any, or when said claims, if any, were incurred, respectively.

These objections were filed April 4, 1916, and plaintiff did not amend so as to meet those objections prior to the trial (which began May 23) or at all; and during the trial defendant objected [Tr. p. 155] to the introduction of any evidence in support of said amendment; which objections the court overruled.

That the allegations of the amendment objected to are mere conclusions is apparent from their reading [Tr. p. 91]. Further, it was not alleged that the indebtedness referred to was reduced to the form of allowed claims, which, as has been elsewhere shown, was essential. As the mortgages in question, if void, were void (as has elsewhere been shown) only as to those creditors whose rights accrued intermediate the execution and recordation of said mortgages, or intermediate the execution of said mortgages and the intervention of bankruptcy proceedings, and only as to those creditors providing their claims had been established against the bankrupt estate by the allowance of the Referee, the defendant was clearly entitled to know (and hence necessarily prejudiced by the failure of the Trustee to either allege or prove) what creditors the Trustee claimed to represent, and as to whom

he claimed the conveyances in question to be void, and the circumstances under which those claims, respectively, were incurred, and the amounts thereof.

Teague v. Anderson Hardware Co., 161 Fed. 765:

"It is impossible to determine satisfactorily whether the lien of this mortgage was effective and operative before its record, under the law of Alabama or under the general law so far as applicable, without knowing the dates when the debts of general creditors other than the Anderson Hardware Company were created, and probably, also, the character and amount of the debts. The allegation in the bill on this subject is as follows:

" 'Orator further shows that a large part of the indebtedness of said Street to creditors who have proven their said claims was created subsequent to the date of said mortgage, and all of said indebtedness was created prior to the filing of said mortgage for record.'

"On this question, under all the authorities, the rights, if any, of general creditors, as against the holder of an unrecorded mortgage, which would be good against the mortgagor, are different in this respect. Debts created after the mortgage was given, and upon the faith of the mortgagor's property being unincumbered, have greater rights than debts in existence at the time the mortgage was made. I think the defendant is entitled to have, and also the court, that it may intelligently pass upon the questions involved, as a part of this bill, the names of all creditors of the bankrupt other than the Anderson Hardware Company, the amounts of their debts, the character of same, and when created.

"As this ground of demurrer is good, it is unnecessary to pass upon the other questions in the case until this defect is cured. If the complainant desires to amend in this respect, he may do so in 20 days from this date, and on failure to do so the demurrer on the ground stated will be sustained, and the bill dismissed."

161 Fed. 766.

The amendment objected to obviously does not (nor does the bill of complaint) allege that the Trustee represented creditors who had established their claims against the bankrupt estate, as required by the bankruptcy law; nor does either the bill or the amendment allege facts indicating that the claims of the creditors, if any, represented by the Trustee were created under such circumstances as to render the mortgages sought to be avoided void as to them. Such only could have been the purpose of the amendment in question; and that it was incumbent upon the Trustee herein to make such proof we have already shown. In the Flatland case, *supra*, a case similar to that at bar, this court dismissed the petition of the Trustee because (196 Fed. 312) he failed to show that he represented creditors as to whom the conveyance sought to be avoided was void.

VI.

Evidence in Support of the Amendment to the Bill in B 94 Should have been Excluded.

The trial court, over defendant's objection, permitted Bannister to testify [Tr. p. 156]:

"The schedule of my assets and liabilities which I signed and verified correctly sets forth the various items of indebtedness which I incurred between the 12th of January and the 23rd of April, 1915, and the dates when incurred; and those items were all unpaid at the time this schedule was filed, on June 2nd, 1915."

Such testimony was not within any issue presented by the pleadings; for, as has just been indicated, there was no allegation in the original bill, nor in the amendment thereto, sufficient to raise the issue as to the names and amounts of claims incurred between January 12, 1915, and April 23, 1915, and the dates when incurred. Furthermore, until it was alleged and proven that the items sought to be established by this testimony had been by the respective claimants established against the bankrupt estate in the manner provided by law, the statement of Bannister as to when the items were incurred was not material.

By reason of the Trustee's failure to prove:

(1) A deficiency of assets of the bankrupt estate to satisfy proven claims.

(2) The existence of the element of "reasonable cause" to believe that the enforcement of the transfers

sought to be avoided would operate to effect preferences.

(3) That he represents creditors as to whom the conveyances and transactions in question are void under the law of California. And

(4) Because the defendant Bank acquired, by the transactions through which said mortgages were received, an equitable lien upon the property covered by the chattel mortgages set forth in the pleadings in B 94; it is respectfully submitted that the decrees in both A 32 and B 94 should be reversed, with costs to appellants.

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No. 2957.

United States
Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Wm. H. Moore, Jr., *Appellee,* vs. National Bank of Bakersfield, et al., *Appellants.*	A 32.
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BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

B 94

STATEMENT OF THE CASE.

This is an action brought by a trustee in bankruptcy to have declared void four chattel mortgages given by the bankrupt, Bannister, to the defendant bank; to declare possession taken thereunder illegal; and to recover from defendant the moneys received from the

sale of certain of said mortgaged goods, and other moneys paid to defendant by bankrupt.

The bill charges that two of said mortgages, each dated January 12, 1915, and covering the bankrupt's stock in trade of hay and grain and securing notes aggregating ten thousand five hundred dollars, all of which notes, except fifteen hundred dollars thereof, constituted antecedent debts, were void, (a) because they were on goods constituting stock in trade of a merchant; (b) because they were not recorded until April 23, 1915, a few days before bankruptcy, and not within a reasonable time after their execution; (c) because they constituted a preference under the Bankruptcy Act; and (d) because they were in fraud of creditors. The bill also charges that the two remaining chattel mortgages, one dated the 21st day of December, 1914, covering a corrugated iron warehouse building, and one dated the 5th day of January, 1915, covering an automobile, and each securing notes referred to in the "blanket mortgage" of January 12th, 1915 (one of the above-mentioned mortgages), were void because not recorded within a reasonable time, and because they constituted a preference, and were in fraud of creditors.

It was charged that all of said chattel mortgages constituted a preference in that at the time of their recordation Bannister was insolvent; that said mortgages were executed and recorded within four months prior to filing the petition in bankruptcy; that at the time of recordation defendant had reasonable cause to believe it was obtaining a preference, and that said mortgages operated to give defendant a larger proportion of its claim than other creditors of the same class.

It is also alleged that Bannister, between the 9th day of February, 1915, and the 25th day of June, 1915, sold the aforesaid stock in trade, the proceeds of which, together with other moneys, were paid to, and credited by said defendant upon said promissory notes; that at all times between the 9th day of February and the 25th day of June, 1915, Bannister was insolvent, and the said bank had reasonable cause to believe that said payments of money so received by it from the said bankrupt would effect a preference in its favor.

It is also alleged that said chattel mortgages were not recorded prior to the 23rd day of April, 1915, by reason of a secret agreement between the bankrupt, Alfred W. Bannister, and the defendant, National Bank of Bakersfield, to keep said documents from the record in order that Bannister's credit might not be impaired or destroyed, and with intent to prevent action being taken by the creditors of the said Bannister to collect their accounts against him, and that by virtue of said secret agreement said Bannister was given a false credit and financial standing whereby his creditors were induced to extend credit for merchandise purchased by him between the 12th day of January, 1915, and the 23rd day of April, 1915. It was prayed that all of said mortgages be declared null and void, and that an accounting be had of the moneys received by said bank, from said bankrupt and under said chattel mortgages, and that judgment be rendered against the bank in that amount.

An answer was filed by the defendant, in which it alleged that after the recordation of the mortgages on April 23rd, 1915, it took possession of the mortgaged

goods on said date; admitted the execution of the mortgages referred to in the bill of complaint, denied that on January 12th, 1915, and April 23rd, 1915, Bannister was insolvent, or that at the time either of the execution or the recordation of the chattel mortgages referred to, defendant had any cause to believe that the enforcement thereof would effect a preference in its favor, and sets out as an affirmative defense the fact that at various times prior to the 12th day of January, 1915, it had loaned Bannister sundry sums of money for the purpose of purchasing corn and grain, and in each instance had taken a chattel mortgage on the goods purchased by him, and that the corn and grain so purchased was placed in the warehouse and subsequently covered by the mortgage of January 12th, and undertook to claim an equitable lien on the mortgaged goods.

Subsequently, by leave of court first had, and with the consent of attorneys for defendant, complainant filed an amendment [Tr. 90] to his bill in equity which, as amended at the trial, charged that on the date Bannister was adjudicated a bankrupt, he had various creditors other than the defendant herein, many of whom had unsecured claims against him, and that the indebtedness in favor of said unsecured creditors was incurred by said bankrupt subsequent to the 12th day of January, and prior to the 23rd day of April, 1915, and that indebtednesses of certain other of said unsecured creditors were incurred by said bankrupt on dates prior to the 23rd day of April, 1915. Subsequently, an answer thereto was filed by defendant, and thereafter, pursuant to stipulation, at the time of trial

the amendment to the bill in equity was amended [Tr. 93] by the insertion of the words "unsecured" referred to in the transcript.

In reply thereto complainant contends:

That defendant did not take possession of the mortgaged goods until after the petition in bankruptcy was filed. That the chattel mortgages set forth in defendant's answer never have been recorded, were a secret lien, and are void; that with the knowledge of defendant the mortgaged goods were sold by bankrupt in the regular course of trade, and the mortgaged goods remaining were commingled and confused with other goods of the same character purchased by bankrupt, and that the goods, the possession of which was taken by defendant after the filing of the petition in bankruptcy, were goods constituting a portion of the mortgaged goods and other goods commingled therewith. That by reason of the foregoing facts a constructive fraud operates against said defendant and in favor of creditors of the bankrupt; that by reason thereof, and by reason of the fact that the mortgages referred to in the original bill are void as against creditors, that defendant's claim of an equitable lien is unsound.

The court, without findings, entered a decree against defendant adjudging each of said four mortgages void; that payments in the sum of one thousand dollars were made by said bankrupt between April 23rd and May 5th, 1915, on which last date the petition in bankruptcy was filed, and the said payment of one thousand dollars constituted a preference, within the terms of the Bankruptcy Act; and that subsequent to May 5th, 1915, defendant took possession of, and sold the undisposed

goods covered by the mortgages of January 12th, 1915, and other similar property commingled therewith, and received from the sale thereof $8,381.13, the reasonable value thereof; and further rendered judgment against said defendant for the sum of $9,381.13, with interest thereon at the rate of seven per cent per annum from July 10, 1915, the date of filing suit.

STATEMENT OF FACTS.

Alfred W. Bannister, for a long time prior to January, 1915, and until the 6th day of May, 1915, was a merchant, doing business in Bakersfield, engaged in buying and selling hay and grain. [Tr. 128, 132, 150, 235.] He carried his stock in trade in two warehouses, one at the so-called "Bannister Warehouse," in Bakersfield, and one at Wible Siding, near Bakersfield. [Tr. 149-150.]

Mr. Bannister was well acquainted with Mr. Russell, the cashier of the defendant bank, and when Mr. Russell became cashier of that bank in November of 1914, it was agreed between him and Bannister that the bank should loan Bannister money from time to time and take chattel mortgages on goods belonging to Bannister, which it should hold unrecorded until "something should happen" which would warrant the bank in recording them. [Tr. 131-132, 235-236, 241.]

It appears that in November, 1914, the bank loaned bankrupt the sum of twenty-five hundred dollars, taking a chattel mortgage, which was never recorded, on corn and hay on three ranches, securing a note in that sum dated November 11th, 1914. [Tr. 189, 236-237.]

It then loaned the sum of one thousand dollars, re-

ceiving a note dated December 1st, 1914, in the sum of one thousand dollars, secured by a chattel mortgage on fifty-five tons of Egyptian corn at the Bannister warehouse in Bakersfield, which mortgage was never recorded. [Tr. 190.]

It then loaned bankrupt the sum of fifteen hundred dollars, receiving a note dated December 9th, 1914, in said sum, secured by chattel mortgage on hay and grain situated on three ranches, and twenty tons of barley and twenty tons of corn at Bannister's warehouse in Bakersfield, which mortgage was never recorded. [Tr. 191.]

It then loaned Bannister on the 21st day of December, 1914, the sum of fifteen hundred dollars, taking on that day a note in the sum of fifteen hundred dollars secured by mortgage on corn and oats on two ranches, the corn and oat hay on a third ranch, which mortgage was never recorded. [Tr. 151-152.]

On the 4th day of January, 1915, it loaned bankrupt fifteen hundred dollars, taking a note in that amount on that date, secured by mortgage on sixty tons of corn, twenty tons of alfalfa hay, and fifty tons of barley hay at Bannister's warehouse, which mortgage was never recorded. [Tr. 192-193.]

On January 5th, 1915, it loaned bankrupt the sum of one thousand dollars, taking a note therefor in that sum, as of that date, secured by chattel mortgage, never recorded, on seventy tons of corn at Bannister's warehouse at Bakersfield. [Tr. 192-193.]

None of the aforesaid mortgages, as stated, were ever recorded. [Tr. 189-190-191-151-152-192-193.]

On the 21st day of December, 1914, bankrupt, as

additional security for the aforesaid note of December 21st, 1914, gave a chattel mortgage upon the corrugated iron warehouse building at Wible Siding [Tr. 152], and on January 5th, 1915 [Tr. 193], to secure the aforesaid note in the sum of one thousand dollars Bannister executed an additional mortgage upon a Stutz automobile. On January 12th, 1915, the bank loaned Bannister the additional sum of fifteen hundred dollars, taking a mortgage therefor on two hundred tons of grain hay located at Bannister's warehouse at Wible Siding [Tr. 150], and on the same date, to-wit, January 12th, 1915, to secure all the aforesaid notes, Bannister made a blanket mortgage on all the hay and grain in both the Bannister and Wible warehouses, constituting practically all his then stock in trade, the amount thereof being particularly described in said mortgage, and covering all that then remained of the original goods covered by the previous unsecured chattel mortgages. [Tr. 150, 181, 202.]

None of the mortgages were ever recorded except the two mortgages of date January 12th, 1915, and the two mortgages covering the Stutz automobile and the corrugated iron warehouse, which were not recorded until April 23rd, 1915. [Tr. 150, 152, 193, 187.]

It is conceded and undisputed that the blanket mortgage covered the stock in trade of a merchant. [Tr. 180, 185.] At the time the different mortgages were made the possession was in Bannister, and there was no delivery of the goods covered by the different mortgages, and no actual or constructive change of possession thereof until after the petition in bankruptcy was filed on the 5th day of May, 1915. [Tr. 139, 140,

164, 165, 173, 175, 179, 196-203, 213, 219.] Bannister was constantly selling the goods covered by the chattel mortgages and replacing the same by new goods purchased, and continually sold goods therefrom in the ordinary course of business, and confused the remaining mortgaged goods with the new goods purchased and substituted in lieu of the goods sold from the mortgaged stock. [Tr. 149, 171-172, 177, 178, 179, 188, 194, 195, 196, 202, 205, 206, 249, 252.] The officials of the bank at various times after January 12th, 1915, and prior to April 23rd, 1915, examined Bannister's books and were conversant with his method of doing business, and knew that he was selling the mortgaged goods in the ordinary course of business. [Tr. 172, 238, 246.] The bank made no protest, but rather acquiesced in this method of business, and throughout the entire interim retained the chattel mortgages in its vault, where they were first placed after their execution. [Tr. 172, 233, 238, 240, 252.] The creditors were never notified of the existence of the chattel mortgages and the creditors examined stated that they never knew of the existence thereof. [Tr. 153, 230, 231, 246, 247.] The result was that Bannister obtained a credit to which he would not have been entitled had the creditors known of the existence of the chattel mortgages.

On April 21st, 1915, Bannister's home in Los Angeles was attached [Tr. 164], and Bannister says that immediately thereafter he notified Mr. Russell of that fact. [Tr. 131, 164.] Mr. Russell, the bank's cashier, states that on April 23rd, 1915, before recording the chattel mortgages, he met a man on the street who told

him that Bannister was in financial trouble; that while he did not know what the trouble was, that inasmuch as they had spoken to him about it, he went back to the bank, got the mortgages, and recorded them, first telling his assistant cashier that he was going to record them and that by recording them, "if something should happen" he could take possession and protect his money. [Tr. 241.] When Bannister returned from Los Angeles, Russell told him that he had heard that he was in difficulties down there, and that he had recorded all the mortgages, to which Bannister responded, "All right; it belongs to you, that was the agreement." [Tr. 241, 242.]

The petition in bankruptcy was filed May 5th, 1915. [Tr. 165.] The bank did not take possession under its chattel mortgage until May 6th, 1915. The bank received after April 23rd, 1915, the sum of $9,881.13, of which $500 was paid May 4th, $500 May 5th, and the balance thereof on May 6th and subsequent thereto, and the entire $9,881.13 was received from the proceeds of the sale of a portion of the mortgaged hay and grain, and other hay and grain commingled therewith in lieu of that sold in the ordinary course of business. [Tr. 249.] As said property was sold subsequent to the filing of the petition in bankruptcy the proceeds thereof were placed to Bannister's credit and checks were given by him to the bank in the aforesaid amounts. [Tr. 170.]

Such being the facts, we contend:

First: That all preliminary unrecorded mortgages

referred to in defendant's answer are each void because never recorded;

Second: That the two mortgages of date January 12th, 1915, one of them being the "blanket mortgage," and both being on hay and grain, were void for the following reasons:

(a) Because they were on goods constituting the stock in trade of a merchant;

(b) Because they were not recorded within a reasonable time;

(c) Because no possession was taken thereunder prior to the institution of bankruptcy proceedings, and the pretended possession was void under section 3440 of the Civil Code of California;

(d) Because, with the exception of one note dated January 12th, 1915, they were given to secure an antecedent indebtedness; and because they constituted a secret lien; and the bankrupt conducted his business during the interim prior to recordation in his ordinary manner, selling from the mortgaged goods, and buying other goods which he substituted in lieu of that sold, all with the knowledge of the defendant, thus creating a constructive fraud as against creditors;

(e) That all of the four mortgages recorded April 23rd, 1915, operated as a preference, in that at the date of their recordation the bankrupt was insolvent, the defendant had reasonable cause to believe that by recording the mortgages it would obtain a preference, and the effect thereof was to give to defendant a larger percentage of its claim than other creditors of the same class.

Third: That even prior to the amendment of the

Bankruptcy Act of 1910, the trustee had the right to set aside transactions constructively fraudulent, and preferences given by the bankrupt; since which time, by the amendment to 47a of the Bankruptcy Act, as construed by the courts, as to all property not in the custody of the bankruptcy court the trustee is vested with all the rights, remedies and powers of a potential judgment creditor holding an execution duly returned unsatisfied, and that at the time of filing the petition in bankruptcy on May 5th, 1915, under the laws of California, a judgment creditor might have maintained an action to set aside the mortgages on the ground that they were not recorded within a reasonable time, and because some of them were on stock in trade of a merchant.

On the other hand, it is now contended by the defendant:

First: That there is no showing in the record as to the amount of proven claims in this estate, and

Second: That the evidence does not show that at the time of recordation the bank had reasonable cause to believe that such recordation would give them a preference;

Third: That it had an equitable lien, arising out of the fact that the bank also held prior mortgages, void because not recorded, securing all the notes but one covered by the blanket mortgage.

To which we respond:

First: That the law does not require that the trustee either aver or prove the amount of proven claims, and that the evidence establishes the fact that to permit

defendant to retain possession of moneys received by it will permit it to receive a larger percentage of its debts than other creditors of the same class;

Second: That the evidence conclusively shows that just prior to the recordation of the mortgages, defendant had reasonable cause to believe that it would obtain a preference by such recordation;

Third: No equitable lien can be found. An equitable lien will not be found in favor of one guilty of a constructive fraud. It cannot be established, on goods confused with other goods with consent of the bank, by the bankrupt. Neither can it be established since rights of creditors intervene, and as to such creditors it is void.

I.

The Two Chattel Mortgages Dated January 12th, 1915, One of Them Being the "Blanket Mortgage," Were Void Because They Covered the Stock in Trade of a Merchant in Contravention of Section 2955 of the Civil Code of California.

No Actual Possession Was Taken Thereunder, and the Pretended Possession, Contended for by Defendant, Was Void Under Section 3440 of the Civil Code Because the Alleged Lien or Transfer Was Given or Made by the Bankrupt While in Possession and Control of the Property and Was Not Accompanied by Immediate Delivery, Followed by an Actual and Continued Change of Possession; and

Even Assuming Actual Possession Taken, No Notice of the Intended Transfer Was Recorded in the Office of the County Recorder, as Provided for by Section 3440 (supra).

Bannister was a merchant, engaged in the business of buying and selling hay and grain. He was so described in his bills and letterheads and in some of the mortgages in evidence. [Tr. 128, 150, 152.] His stock in trade was in the Bannister warehouse and the warehouse at Wible Siding. [Tr. 150.] Indeed, it was admitted by counsel at the time of the trial that this merchandise constituted stock in trade of a merchant. [Tr. 180 and 185.]

Section 2955 of the Civil Code provides:

"Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following: * * * 3. The stock in trade of a merchant."

Prior to the amendment of the Civil Code of 1909, section 2955 provided as follows: "Mortgages may be made upon the following personal property, and no others"; and then follows a list of personal property upon which mortgages might be made.

It has been held under this section that where the chattel mortgage is upon articles which may not be mortgaged, that even the recordation thereof imparts no constructive notice to the world. In the case of Bank of Ukiah v. Moore, 106 Cal. 679, it is said:

"It will be observed that the foregoing statement that while the complaint avers the execution and recording of the mortgage as provided for, by sections 2955 and 2957 of the Civil Code, in cases of mortgages on personal property, yet the articles mortgaged—sheep and neat cattle—were not among the articles provided to be mortgaged under said section 2955.

"It follows that the mortgage was not one the recording of which imparted constructive notice to the world. * * *

"The theory of appellant, however, presupposes a valid instrument to record, and in the present instance the objection is, there was no valid statutory mortgage to be recorded, and as the statute provides for recording only those which may be made pursuant to section 2955, and in the manner designated in section 2957, the record could impart no constructive notice."

And it is the law of this state that such a mortgage is invalid as against creditors of the mortgagor.

Bank of Ukiah v. Moore, 106 Cal. 680;

Perkins v. Maier & Zobelein Brewing Co., 133 Cal. 498.

Defendant in its answer claims possession was taken immediately after the recordation of the mortgage on April 23rd, but it does not establish this contention by evidence. On the contrary it appears that possession was not taken until subsequent to the filing of the petition in bankruptcy on May 5th. Mr. Russell, the bank's cashier, testified that in addition to recording the mortgages on the 23rd day of April, he made arrangements with Miss Fitzpatrick to go to the Bannister warehouse at Bakersfield the next morning and look out for all the stuff that went out of there, and that he told her to keep a clear record of everything that came in and went out. That she reported daily to him and he paid her for doing the work, but she did not pay over to him the cash received from the office. [Tr. 242.] Miss Fitzpatrick was then, and had been for a long time prior thereto, acting as a stenographer for the bankrupt, Bannister, receiving fifty dollars a month for her services. [Tr. 196 to 201, inclusive.] It affirmatively appears from the evidence that after April 24th, other help at the warehouse was paid out of the receipts of the warehouse, and the balance of the money was credited to Bannister's account at the bank. [Tr. 197, 201, 250.] At no time prior to the filing of the petition in bankruptcy was there any visible change of possession. No signs were placed on the building in-

dicating such change of possession, and it does not appear that any markings, labels, or tags were placed upon any of the mortgaged property indicating that the bank was in possession thereof. [Tr. 198, 199.] The employees of the bankrupt remained the same and were paid the same, and by the bankrupt's check. [Tr. 186, 197, 203, 242.] Bannister, upon his return from Los Angeles on April 24th, continued working on the place and in possession, control and custody of the warehouse and of the proceeds thereof, and to outward appearances continued to conduct the business until May 6th, 1915. [Tr. 196, 202, 206, 219, 242.] No change was made in the use of Bannister's letterheads prior to May 6th. [Tr. 128.] Bannister himself testified that he continued in possession down to the filing of the petition on May 5th, 1915. [Tr. 165.] Bannister further testified that the shipping receipts would show the shipments made by the bank after May 4th, 1915. [Tr. 173.] The shipping receipts show the shipments were made by Bannister April 24th, April 27th, May 3rd, 4th and 5th, and that the first shipment made by the bank after the recordation of the mortgages was made on May 6th, 1915. [Tr. 212, 213.] Bannister's ledger shows an account opened with the National Bank of Bakersfield as of date May 6th. [Tr. 175.] It is also significant that Russell testified that the bank received $8,881.13 from the sale of the mortgaged hay and grain. [Tr. 249.] The date of the different payments made to the bank appears on page 244 of the transcript. Had possession been taken by the bank on April 24th, the bank would have received $9,381.13

from the sale of the mortgaged hay and grain instead of the sum testified to by Mr. Russell.

It is the settled law of this state that possession, to be valid, must be open, visible, and of such a character as to give notice to the world that there has been a change of possession in order that creditors may be bound thereby.

Center v. Kelton, 20 Cal. App. 612;
George v. Pierce, 123 Cal. 172;
Lilienthal v. Ballou, 125 Cal. 185;
Sequeira v. Collins, 153 Cal. 426;
Ross v. Thomas, 24 Cal. App. 734.

It is conclusively established, therefore, that under the facts and the law of this state, no possession was taken by the bank prior to May 6th, and subsequent to the filing of the petition in bankruptcy.

However, assuming, for the sake of argument, that such constructive possession was taken as contended for by defendant, prior to the filing of the petition in bankruptcy, such possession is void, under section 3440 of the Civil Code, for the reason that the alleged transfer was made by the bankrupt while in possession and control of the property, and was not accompanied by an immediate delivery, followed by an actual and continued change of possession; and even if we assume actual possession taken, no notice of the intended transfer was recorded in the office of the county recorder as required by section 3440 of the Civil Code.

Section 3440 provides:

"Every transfer of personal property, * * * and every lien thereon, other than a mortgage,

when allowed by law, * * * is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or encumbrancers in good faith subsequent to the transfer; * * *

"And provided, also, that the sale, transfer, or assignment of a stock in trade (or of such a quantity of a stock in trade as to be substantially a whole) in bulk, or in any manner otherwise than in the ordinary course of trade and in the regular and usual practice and method of business of the vendor, against the existing creditors of the vendor, transferrer, or assignor, unless at least five days before the consummation of such sale, transfer, or assignment the vendor, transferrer, or assignor, or the intended vendee, transferee, or assignee shall record in the office of the county recorder in the county or counties in which the said stock in trade is situated, a notice of said intended sale, transfer, or assignment. * * *"

Neither, at the time of the execution or recordation of the chattel mortgages, was there any immediate delivery, followed by actual and continued change of possession.

The first portion of section 3440 quoted is applicable because the mortgages referred to, being on the stock in trade of a merchant, were not allowed by law, and

therefore any lien which the mortgages might have created as between the parties, because not accompanied by an immediate delivery and followed by an actual and continuous change of possession, was conclusively presumed to be fraudulent and void as against creditors.

Furthermore, the transfer was upon the stock in trade of a merchant, in bulk, and not in the ordinary course of trade and in the usual method of business or the vendor, and the record fails to show, as required by the statute, that five days before the consummation of such transfer, a notice of said transfer was recorded in the office of the county recorder. In fact, the evidence on the subject negatives such notice. [Tr. p. 177.] So, assuming actual possession taken, such possession was fraudulent as to creditors then existing.

II.

The Aforesaid Two Chattel Mortgages, Dated January 12, 1915, One of Them Being the "Blanket" Mortgage, Together With the Mortgages on the Automobile and the Warehouse, Are Also Void Because Not Recorded Within a Reasonable Time After Their Execution.

Under the Laws of California It Is Not Necessary That Such Creditors Should Have Attached or Obtained a Judgment Lien Before the Recordation of the Mortgages in Order That They Be Permitted to Take Advantage of the Invalidity Thereof. The Trustee Has All the Rights of a Potential Judgment Creditor (Whether or Not Such a Judgment Creditor Did in Fact Exist) as of the Date of the Filing of the Petion in Bankruptcy.

During the interim between the execution and the recordation of the mortgages the bankrupt incurred a large amount of indebtedness, the dates of incurring some of which is set forth in the schedules in bankruptcy. [Tr. p. 156.] He also incurred a large amount of indebtedness prior to making the mortgages. [Tr. p. 156.] The creditors extending credit between the execution and recordation of the mortgages were all unsecured. The mortgages, upon execution, were placed in the safety deposit vault of defendant bank and no notice thereof was given by the bank to other creditors.

The mortgages recorded April 23rd, 1915, were made on the following dates:

One dated December 21st, 1914, on a corrugated iron and frame warehouse, located at Wible Siding, Kern county, California; one dated January 5th, 1915, on a Stutz automobile; and two dated January 12th, 1915, on stock in trade.

Under the laws of California a chattel mortgage not recorded within a reasonable time after the execution thereof is void as to creditors of the mortgagor. Section 2957 of the Civil Code provides:

> "A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith and for value, unless:
>
> "1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;
>
> "2. It is acknowledged or proved, certified, and recorded in like manner as grants of real property."

The doctrine stated has been applied in this state in Ruggles v. Cannedy, 127 Cal. 291. In that case the creditors were created intermediate the execution and recordation of the mortgage. The reasoning of the court, however, would result in the application of the doctrine to any creditors, whether such creditors were created before or after the execution of the mortgage. The mortgage there made was not recorded until six months after its execution, and two days before the maker, under his voluntary petition, was declared an insolvent. Intermediate the time of giving and the time of recording the mortgage, Wilgus, the maker,

incurred debts, some of which were proven and allowed in the insolvency court. The creditors knew nothing of the mortgage until its recordation. The court held that a chattel mortgage withheld from record beyond a reasonable time necessary for its recordation is void against creditors, basing its decision upon the ground that the recordation of a chattel mortgage, pursuant to section 2957 of the Civil Code, is intended to take the place of immediate delivery and change of possession of personal property essential to effect transfers of personal property in other cases under section 3440 of the Civil Code. That prior to the enactment of section 2957 a chattel mortgage, to be valid, must have been followed by immediate change of possession, and that section 2957, requiring recordation, simply substituted such recordation in place of the immediate change of possession previously required, and that therefore such recordation must be made immediately, or at least within a reasonable time. And the court further held that it was not necessary that the creditors should have attached or obtained judgment prior to recordation in order that they might object to the validity of the chattel mortgage; that it was only necessary that the creditor, as a preliminary step to bringing suit, should reduce his claim to judgment, and that this might be done at any time before suit instituted. The court says:

> "But here it is argued that, while the law makes recordation the substitute for an immediate delivery, it does not mean or require immediate recordation, but only provides that, when effected, recordation is the equivalent of immediate delivery and continued an actual change of possession.

Considering that the law demands immediate delivery, and that recordation is but a substitute for it, it is not easy to see how an indefinitely delaved recordation may be said to take the place of an actual, immediate delivery. One being designed as a substitute for the other, what is the condition, in the one case, if the property be not immediately delivered? Indisputably, the mortgage is void as to creditors. What, then, is the condition in the other case for the indefinite period during which there has been no recordation? While recordation is lacking there is not only no equivalent for an immediate delivery, but there is no delivery at all. Recordation itself is the substitute for delivery.

"A prompt recordation most obviously takes the place of an immediate delivery, and a delayed recordation of a tardy delivery. Now, then, can a recordation effected one year or ten years after the execution of the mortgage be said to be the equivalent of the delivery which by the law is required to be made with all reasonable dispatch? Even more untenable does this argument seem when consideration is had for the manifest policy of these laws. The very object of them all, the reason for their being, is to prevent secret liens upon and interests in personal property." * * *

"With this for the unquestioned policy of the law, how can it successfully be urged that an interpretation which fosters and encourages the very evil which the law was designed to check can be the true one? A mortgage without immediate delivery would create a secret lien, admittedly void against creditors. Is a mortgage without immediate recordation any less a secret lien, or any less an evil to be avoided. Prior to the amendment to section 2955 of the Civil Code, adopted in 1895,

as counsel well instance, if a person had desired to borrow money upon his farming implements he would have been compelled to transfer possession immediately under section 3440 of the Civil Code. By the amendment these implements are placed in the list of those upon which statutory chattel mortgages may be given. Therefore, he may now make such a mortgage upon them without delivery. Did the legislature intend to accommodate the farmer by enabling him to retain possession and use of his property, while at the same time protecting the public by recordation? Or did it design to make fraud easier by framing an ever-increasing list of articles upon which might be placed secret liens? The mortgagor holding possession could thus obtain credit upon the strength of his apparent untrammeled ownership, while the mortgagee could defeat the creditors' recovery by recording his mortgage at any time before the levy of an attachment. * * *

"We conclude upon this question that our law requires immediate recordation in lieu of immediate delivery, and that when such recordation is not effected the mortgage 'is void as against creditors of the mortgagor.' The penalty for a failure to record promptly in the case of a mortgage is identical with the penalty under section 3440 for a failure to delivery promptly in the case of a sale. In either case the failure *results* in a *legal fraud* against those whom the statute enumerates and protects. Section 3440 excepts a 'mortgage when allowed by law' from the requirement of immediate delivery, because, and only because, the recordation takes the place of delivery. It certainly cannot be said that it was the design of the legislature to exclude the articles of personal property affected

by such mortgages from the operations of the laws forbidding secret liens." * * *

"But it is insisted that, even if an unrecorded mortgage is void at the instance of creditors, only those creditors may take advantage of the law who by judgment and execution levy, or at least by attachment levy, have acquired a lien upon the property before recordation. * * *

"To this the answer is that such is not the law of this state. In terms, this rule is limited to those cases where immediate recordation is not required by law, and in our state, as has been discussed, as well as in other states under similar and well-nigh identical statutes, as will be shown, immediate recordation is exacted. Again, as we have seen, a perfect analogy exists in our law between the case of sales and the case of mortgages of personal property. In both, immediate delivery, or its equivalent—immediate recordation—must take place. In each the result of a failure in this particular is to render the contract absolutely void as to creditors. In Watson v. Rodgers, 53 Cal. 402, it is held that a sale of personal property unaccompanied by an immediate delivery is void as to creditors, notwithstanding the delivery was effected before the creditors acquired a lien by attachment levy. In Chenry v. Palmer, *supra,* it is decided that, whether the contract is a sale or a mortgage, in either event, not being followed by immediate delivery, it was void as to creditors, though delivery was made before levy. In other words, two distinct propositions have thus been decided. 1. *That neither in the case of a sale nor of a mortgage would a delayed delivery validate the contract against creditors; and* 2. *That it was not necessary that these creditors should have acquired*

rights by judgment or attachment before delivery of the chattel sold or mortgaged to warrant their setting aside the transfer. Our recordation laws, admittedly being but a substitute for such immediate delivery, certainly have not changed the principles here announced, and should not be said to have changed the rule which elsewhere finds abundant support." (Italics ours.)

The doctrine of Ruggles v. Cannedy was followed in the case of Hopper v. Keys, 92 Pac. 1019, 152 Cal. 488, which was an action under section 2965 of the Civil Code, providing that when mortgaged personal property was removed from the county it is exempt from the operation of the mortgage unless the mortgagee, within thirty days, causes the mortgage to be recorded in the county to which the property has been removed. It was held that unless the mortgage was again recorded in the county to which the property was removed within thirty days after the removal the mortgage was void as to creditors. The court saying:

"And it may here be stated that in an elaborate and signally able opinion by Justice Henshaw in Ruggles v. Cannedy, *supra,* it is held that the recordation of the mortgage, having been designed by the statute as a substitute for and equivalent of immediate possession under the former system in vogue in this state, should be had immediately, or as near thereafter as practicable, upon the execution of the mortgage, in order to give notice to and bind third parties. It must be conceded that the authority for the creation of chattel mortgages in this state derives its force from the statutory provisions relating to the subject, and that all rights accruing by virtue of such mortgages

can be protected and preserved only by fully meeting the requirements of the statute and strictly observing its provisions. That the recordation of the mortgage, under our present system, is one of the necessary and indispensable requisites to protect the rights of the mortgagee against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, is a self-evident proposition. 'It must be remembered, in general, that the policy of the law is against secret liens and charges to injury of innocent purchasers or incumbrancers for value, and in particular that mortgages of personal property are permitted only in certain specified cases, and then only upon the observance of certain formalities, designed to insure good faith, and to give notice to the world of the character of the transaction.' * * * The recordation of the mortgage after the time prescribed by the statute could not have the effect of reviving the mortgage so as to render it operative against the creditors of the mortgagor, because there is no provision in the statute which provides that any such power rests in such act of recordation. * * * The reason upon which rests our whole system of chattel mortgages, as it now exists and was established by our legislature in lieu of the former system in this state, satisfactorily and conclusively answers the question. The law is designed to protect the rights of all classes. It plainly and clearly points the way to the mortgagee for the protection of these rights. But he is by the law chargeable with vigilance, and will not be permitted to sleep upon his rights. He must watch, follow, and pursue the safeguards accorded him by the law."

In Watson v. Rodgers, 53 Cal. 401, it is held that the sale of personal property, unaccompanied by immediate delivery and continued change of possession which is required by section 3440 of the Civil Code, is void as to creditors, notwithstanding the fact that the vendee obtains possession before the levy made by the creditor.

In the case of Cardenas v. Miller, 108 Cal. 252, the court says:

> "Our statute makes a very plain distinction between creditors and subsequent purchasers and mortgagees. The latter are protected against the prior unrecorded mortgage only when they take their conveyances 'in good faith and for value'; and, of course, they do not take them in good faith if they have actual notice of the prior mortgage. But not so as to creditors. As to them good faith is not made a condition, but such a mortgage is declared void without qualification. As to them the question of actual notice is made wholly immaterial under the statute, and, consequently, knowledge on their part of the existence of such unrecorded mortgage will not protect its holder against their claims. The plain import of the statute is that nothing but a compliance with its terms will protect a mortgage of chattels against creditors. This construction is in accord with that given to the statutes of a number of other states wherein a similar distinction is made in the law between creditors and subsequent purchasers and mortgagees."

The Supreme Court of the state, in Ruggles v. Cannedy, *supra*, in support of the foregoing doctrine, cites decisions of various states, among them that of Karst

v. Gane, 136 N. Y. 316. And that case finds further approval in *In re* Mission Fixture & Mantel Co., 180 Fed. 263, decided by District Judge Donworth for the Northern District of Washington, where, in construing the Washington statute requiring the recordation of chattel mortgages, it is said:

> "This language, I think, means that a person is to be deemed a creditor within the contemplation of the statute from the time when the debtor becomes obligated to him, and, if that is its meaning, an unrecorded mortgage is void as to one who holds an obligation against the mortgagor, though the inception of the obligation antedated the making of the mortgage."

In Karst v. Gane, *supra,* the New York Supreme Court says:

> "The first section declares that a mortgage of chattels which shall not be accompanied by an immediate delivery, and an actual and continued change of possession, of the things mortgaged, 'shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the succeeding section of the act.' There is nothing in the language of the section confining the meaning of the word 'creditors,' or restricting its natural sense, or which indicates an intention to distinguish between a creditor who became such before, and one who became a creditor after, the execution of the mortgage."

It is thus the law of this state that the recordation of the mortgage, having been designed by the statute

as a substitute for the immediate possession under the former system in vogue in this state should be effected immediately, or as soon thereafter as practicable. That it is the purpose of the law to declare fraudulent all transfers of personal property when not accompanied by immediate change of possession, except only where a chattel mortgage has been made upon the property contemplated by the law, with an immediate notice thereof by recordation, in lieu of such change of possession, and where a chattel mortgage is not immediately recorded it is void as to creditors.

It is also the law in this state that it is not necessary that the creditors, before the recordation of the mortgage, shall have obtained a judgment against the debtor. It is only necessary that the creditor, before in fact instituting the suit himself, shall have perfected his lien to such an extent as to permit him to file a creditor's bill. Consequently, if, on May 5th, 1915, the date the petition in bankruptcy was filed, any of the bankrupt's creditors had obtained a judgment they would have been entitled to have maintained thereafter a suit to set aside these mortgages.

The rationale of the foregoing rule, declared in Ruggles v. Cannedy, is well stated in Union National Bank v. Oium (N. D.), 54 N. W. 1034, where the court says:

> "It is important that there should be kept in mind a distinction between the right of a general creditor to insist that an unfiled chattel mortgage is void and the ability to enforce this right. While an unfiled chattel mortgage may be void as to a general creditor, he cannot avail himself of the

statute until he has armed himself with attachment or execution and levied on the property, or has in some other way secured a lien thereon. Before he has seized the property covered by the chattel mortgage, or secured some lien thereon, he is in no position to raise the question that the mortgage is void as to him. * * * The statute does not, however, require that he should be armed with process or have a lien on the property to entitle him to come within the category of 'creditors,' as to whom the unfiled instrument is a nullity. The mortgage is not void as to creditors who have seized the property, or who hold process under which they can seize it. This is not the language of the statute. The mortgage is void as to creditors, and nothing is said in the statute about the necessity of a creditor's having secured a lien on the mortgaged property. The fact that the creditor cannot assail the mortgage until he has seized the property is of no moment in determining whether he belongs to the class of persons as to whom the mortgage is void.

A trustee in bankruptcy, under section 47a of the Bankruptcy Act as amended in 1910, has all the rights of a potential judgment creditor; that is to say, he has all the rights that a judgment creditor might have had had the judgment creditor existed on May 5th, 1915, even though that judgment creditor did not, in fact, exist at that time.

Prior to the amendment of 1910 it was the law that the trustee stood in the place of the bankrupt, and in the absence of fraud possessed no greater rights than the bankrupt, and did not have the rights inuring to a creditor. This situation was remedied by the amend-

ment of 1910 to section 47a of the Bankruptcy Act, which provides:

> "And such trustee, as to all property in the custody, or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution, duly returned unsatisfied."

Since this amendment decisions holding that a trustee has no greater rights than those belonging to the bankrupt are no longer controlling. The trustee now has all the rights, remedies, and powers that a judgment creditor, holding an execution returned unsatisfied, might have had, and this even though there were no judgment creditors of the bankrupt at the time of instituting the proceedings in bankruptcy. Such is the law in this circuit.

Pacific State Bank v. Coats, 205 Fed. 618 (C. C. A., 9th Cir.);

Scandinavian-American Bank v. Sabin, 227 Fed. 581 (9th Cir.);

In re Mission Fixture & Mantel Co., 180 Fed. 263.

See also:

In re Pittsburg-Big Muddy Coal Co. (C. C. A., 7th Cir.), 215 Fed. 705;

Interstate Banking & Trust Co. v. Brown (C. C. A., 6th Cir.), 235 Fed. 32;

In re Johnson, 212 Fed. 311;
Gerstman v. Bandman, 157 Fed. 549 (C. C. A., 2nd Cir.);
In re Bothe, 173 Fed. 597 (C. C. A., 8th Cir.);
Post v. Berry, 175 Fed. 564 (C. C. A., 8th Cir.);
Simmons v. Greer, 174 Fed. 654 (C. C. A., 4th Cir.);
Smith v. Mishawaka Woolen Mfg. Co., 172 Fed. 98 (C. C. A., 7th Cir.);
In the Matter of Watts-Woodward Press, 181 Fed. 71 (C. C. A., 2nd Cir.);
In re Beede, 126 Fed. 853;
In re Palmer, 218 Fed. 74;
Bailey v. Baker Ice Machine Co., 239 U. S. 268, 36 Sup. Ct. Rep. 50;
Potter Mfg. Co. v. Arthur, 220 Fed. 845 (C. C. A., 6th Cir.);
In re Gehris-Herbine Co., 188 Fed. 502;
In re Kessler, 186 Fed. 127 (C. C. A., 2nd Cir.);
In re Smith, 198 Fed. 876;
Sattler v. Slonimsky, 199 Fed. 592;
In re Whatley Bros., 199 Fed. 326;
In re Bazemore, 189 Fed. 236;
In re Calhoun Supply Co., 189 Fed. 537.

In the case of Pacific State Bank v. Coats, *supra*, this court, speaking through Judge Wolverton, says:

> "Is the trustee in bankruptcy in a position to controvert the validity of the mortgage either as a real or chattel mortgage? It is insisted on the part of the bank that, because the trustee represents only creditors who became such after the

date of giving the mortgage, he cannot question the validity of such mortgage. The bankruptcy statute provides that:

" 'Such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied.'

"This is an amendment to section 47, cl. 2, sub. 'a,' adopted June 25, 1910, ch. 412, Sec. 8, 36 Stat. 840 (U. S. Comp. St. Supp. 1911, p. 1500). It is the purpose of this amendment to vest in the trustee for the interest of all creditors the *potential rights of creditors* possessing or holding liens upon the property coming into his custody by legal or equitable proceedings. The trustee no longer stands in the shoes merely of the bankrupt, with the limited rights of the bankrupt to attack unrecorded liens which may be valid and unimpeachable by such bankrupt; but the amendment by operation of law vests in him a lien equivalent to such as would be acquired by legal or equitable proceedings upon the property coming into his custody by virtue of the bankruptcy proceedings. 'The class of cases, unprovided for by the original act, and intended to be reached by the amendment,' says Mr. Collier in his work on Bankruptcy (9th Ed.), p. 659, 'was that in which no creditors had acquired liens by legal or equitable proceedings and to vest in the trustee for the interest of all creditors the potential rights of creditors poten-

tial with such liens.' 'This provision of the Bankruptcy Act,' says Witner, judge, *In re* Hartdagen (D. C.), 189 Fed. 546, 549, 26 Am. Bankr. Rep. 532, 535, 'puts the trustee, in so far as the assets of the estate are concerned, in the position of a lien creditor,' distinguishing the case of York Mfg. Co. v. Cassell, 201 U. S. 344, 26 Sup. Ct. 481, 50 L. Ed. 782, and others of its character, which it is thought inspired the amendment."

Scandinavian-American Bank v. Sabin, *supra,* where this court states:

"To the contention of the appellant that the trustee is without authority to maintain the proceeding, for the reason that no creditor has secured a lien upon the goods at the time the bank took possession of them, and hence the trustee secured no greater rights than the bankrupt himself had, it is only necessary to state that section 8 of the Act of June 25, 1910, amending section 47 of clause 2 of the Act of 1898 (36 Stat. 840), provides that the trustee, 'as to all property in the custody * * * of the bankruptcy court, shall be deemed vested with all rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon.' Under this provision of the statute the trustee is not limited to such objections to a transaction between the bankrupt and a creditor as the bankrupt might have had, but he may make any objection that a creditor holding a lien might make. An agreement, therefore, which prior to this amendment would have been valid between the parties, may not be valid as against the trustee. Meier & Frank Co. v. Sabin, 214 Fed. 231, 233, 130 C. C. A. 605."

In re Pittsburg-Big Muddy Coal Co. (C. C. A. 7th Cir.), 215 Fed. 705, the court, through Circuit Judge Baker, says:

> "But we hold that under the amendment the filing of a petition in bankruptcy constitutes an equitable levy and a caveat to the world, for the following reasons: (1) The plain and natural reading of the words gives the trustee the same right to attack or resist secret liens that judgment creditors would have had if bankruptcy had not intervened, no matter whether there are or are not any such creditors when the petition in bankruptcy is filed. (2) If the amendment were to be construed so as to limit the power of the trustee to cases in which there are lien creditors, virtually nothing would be added to the original act, for under section 67c and 67f liens created within four months prior to the filing of the petition may be used by the trustee for the benefit of the estate. (3) Although extraneous matter cannot properly be looked to in aid of the interpretation of a clear and unambiguous statute (for such a statute carries its own means of interpretation), yet it may not be amiss, as against a contention that this amendment is not unambiguous, to note that it was the intention of the committee in charge of the measure that the rule announced in York Mfg. Co. v. Cassell should be changed. 3 Remington 331; Cong. Rec., 61st Cong., 2d Sess., pp. 2552-2554. (4) Numerous decisions in the District and Appellate Courts directly or impliedly support this construction."

In Interstate Banking & Trust Co. v. Brown, 235 Fed. 35 (C. C. A., 6th Cir.), the court says:

> "By virtue of the amendment of June, 1910,

> to section 47a (2) of the Bankruptcy Act, this trustee represents creditors not secured by receipts with the same force and effect as if these unsecured creditors had, on April 26th, levied executions upon the cotton in the warehouse."

In the case of Bailey v. Baker Ice Machine Company, 239 U. S. 268, the Supreme Court of the United States, in determining the time that the trustee took the status of a creditor holding a lien, states:

> "Had it been intended that the trustee should take the *status of a creditor holding a lien by legal or equitable process* as of a time anterior to the initiation of the bankruptcy proceeding, it seems reasonable to believe that some expression of that intention would have been embodied in section 47a as amended. As this was not done, we think the better view, and one which accords with other provisions of the act, is that the trustee takes the *status of such a creditor* as of the time when the petition in bankruptcy is filed."

In other words, the trustee takes the status of a creditor holding a lien by legal or equitable process as of the time when the petition in bankruptcy is filed.

It is the law that in states where the mortgages are void only as to creditors extending credit intermediate the execution and recordation of the mortgage, that the chattel mortgage is void as to the trustee because he possesses the rights of the most favored creditor.

In re Johnson, 212 Fed. 315;

In re Farmers' Co-Operative Co., 202 Fed. 1008.

It is not the law, as contended by counsel, that the trustee represents only proven claims, and neither is it necessary to allege or prove the amount of such

proven claims. This subject is separately treated under subdivision "P" of paragraph III in our discussion of preferences.

III.

Assuming That the Four Mortgages Were Not Void Under the Laws of California, They Would Then, Nevertheless, Constitute a Preference Because (A) Under the Law of California They Were Required to Be Recorded, and (B) on the Date of Recordation, Being Within Four Months of the Filing of the Petition, Bankrupt Was Insolvent, and (C) the Bank Had Reasonable Cause to Believe That the Recordation Thereof Would Effect a Preference, and (D) Because the Effect Thereof Would Be to Give to Defendant a Larger Percentage of Its Claim Than Other Creditors of the Same Class.

(A)

A Chattel Mortgage in California Is Required to be Recorded.

The California Code Requires That the Chattel Mortgage Be Recorded.

(Supra, page.....). Section 60(b) of the Bankruptcy Act provides that if, at the time of the recording of a transfer—if by law recording is required—and being within four months before the filing of the petition in bankruptcy, the bankrupt be insolvent and the transfer then operate as a preference

and the person receiving it shall then have reasonable cause to believe that the enforcement of such transfer shall operate as a preference, it shall be voidable by the trustee. It is well settled, as heretofore shown, that the chattel mortgages were required to be recorded, within the meaning of this section.

In Carey v. Donohue, 240 U. S. 430, 36 Sup. Ct. Rep. 386, a case arising under the Ohio statute declaring fraudulent an unrecorded deed insofar as relates to subsequent *bona fide* purchasers, without knowledge of the existence of the deed, the Ohio courts having declared thereunder that the failure to record causes no rights to accrue to any one other than the *bona fide* purchaser. The court, in holding that the recording of the deed was not required by law within the meaning of the provisions of the Bankrupt Act, since under the local law the failure to record the deed did not render it invalid as to the grantor's creditors, says:

> "As Congress did not undertake in section 60 to hit all preferential transfers (otherwise valid) merely because they were not disclosed, either by record or possession, more than four months before the bankruptcy proceeding, the inquiry is simply as to the nature of the requirement of recording to which Congress referred. The character of the transfer itself, both with respect to what should constitute a transfer and its preferential effect, had been carefully defined. It is plain that the words are not limited to cases where recording is required for the purpose of giving validity to the transaction as between the parties. For that purpose, no amendment of the original act was needed, as in such a case there could be

> no giving of a preference without recording. But in dealing with a transfer, as defined, which, though valid as between the parties, was one which was 'required' to be recorded, the reference was necessarily to a requirement in the interest of others who were in the contemplation of Congress in enacting the provision. *The natural, and, we think, the intended, meaning, was to embrace those cases in which recording was necessary in order to make the transfer valid as against those concerned in the distribution of the insolvent estate; that is, as against creditors, including those whose position the trustee was entitled to take.*"

Inasmuch as chattel mortgages, under the law of California, are required to be recorded and, at least until recorded are invalid as against creditors, the question is whether, on April 23rd, 1915, the date of recording the mortgages, they operated as a preference.

The case of Carey v. Donohue, *supra*, was discussed in Bunch v. Maloney (C. C. A. 8th Cir.), 233 Fed. 967. In that case it appeared that in Arkansas the statute provided that every mortgage shall be a lien on the mortgaged property from the time it is recorded and not before. The Supreme Court of Arkansas had held that a chattel mortgage, though not recorded, was good as against the mortgagor and general creditors. The court says:

> "The Supreme Court did not have before it in Carey v. Donohue the question which arises here. Its decision was that a trustee could not, under section 60b, avail himself of a recording requirement exclusively in the interest of some one out-

side the purview of the Bankruptcy Act and for whom he was not authorized to speak. But the language employed in the opinion in that case is broad enough to admit of the assertion of a voidable preference by the trustee as the representative of general creditors, though while without lien they may have been remediless under the local statute, had bankruptcy proceedings not intervened. Thus it was said:

> 'The natural, and we think the intended, meaning was to embrace those cases in which the recording was necessary in order to make the transfer valid as against those concerned in the distribution of the insolvent estate; that is, as against creditors, including those whose position the trustee was entitled to take * * * In the present case there was no requirement of recording in favor of creditors, either general creditors or lien creditors.'

Again:

> 'Rather, as we have said, we deem the reference to be to requirements of registry or record which have been established for the protection of creditors—the persons interested in the bankrupt estate, and in whose behalf, or in whose place, the trustee is entitled to act.'

"The reasonable conclusion is that, where the applicable registry statute provides generally that an unfiled or unrecorded transfer shall be void as to 'creditors,' or employs words of similar import, as in Arkansas, the trustee in bankruptcy, as the representative of general creditors, may invoke the remedy of section 60b, regardless of the local construction of the statute making a procedural

distinction between creditors with a lien and those without."

(B)

ON APRIL 23RD, 1915, BANNISTER WAS ADMITTEDLY INSOLVENT.

The testimony is undisputed that Bannister was insolvent both on April 23rd and April 8th, 1915. [Tr. 167, 181, 182, 232.] The mortgages were recorded April 23, 1915. [Tr. 150, 152, 193.] The involuntary petition in bankruptcy was filed May 5, 1915. [Tr. 165.] Bannister scheduled in bankruptcy assets in the amount of $59,157 at his valuation, but he includes in this a claim against the Los Angeles Hay Storage Company in the sum of $17,492—admittedly worthless [Tr. 181-182], and other items are scheduled thousands of dollars in excess of the valuation placed thereon by experts. His liabilities, scheduled at only $46,756, do not include $9,200 of the $10,500 indebtedness to the National Bank of Bakersfield, then existing, and does not include other obligations aggregating $6,302.94. [Tr. 167.] When these deductions and additions are computed on his schedule of assets and liabilities it will readily be seen that Bannister was clearly insolvent.

(C)

THE DEFENDANT HAD REASONABLE CAUSE TO BELIEVE, ON APRIL 23, 1915, BEFORE THE RECORDATION OF THE MORTGAGES, THAT THE RECORDATION THEREOF WOULD EFFECT A PREFERENCE IN ITS BEHALF.

Bannister testified that his home had been attached on April 21, 1915. His wife had written him and had told him the home was attached. He says he got ready and probably went to the bank to see Russell, the cashier, or telephoned him that he had to go to Los Angeles right away, that his home had been attached. [Tr. 164.] That when he received the letter from his wife he went to the bank and explained the situation to them. He does not remember what they said, only that they were going to put all that stuff that he had given them on record. [Tr. 131.] He went to the bank just as soon as he was attached. [Tr. 138, 164.]

Russell testified that the bank was to put the mortgage on record if anything happened [Tr. 241]; and Bannister testified that it was up to the bank to put them on record any moment if they thought they were not fully protected. [Tr. 132.] He also testified that on April 23rd, 1915, before recording the chattel mortgages, he met a man on the street who told him that Bannister was in financial trouble. [Tr. 241.] While he did not know what the trouble was, that inasmuch as they had spoken to him about it he went back to the bank, got the mortgages and recorded them, first telling his assistant cashier that he was going to record them and that by recording them, if something should happen he could take possession and protect his money.

[Tr. 241.] When Bannister returned from Los Angeles Russell told him that he had learned that he was in difficulties down there and that he had recorded all the mortgages, to which Bannister responded, "All right, it belongs to you, that was the agreement." [Tr. 241-242.]

At and prior to the recording of the chattel mortgages the Los Angeles Hay Storage Company, of which Bannister was almost the sole owner, was in financial straits [Tr. 141-142-143], and the bank at that time knew that the Los Angeles Hay Storage Company was in trouble with its creditors, and that Bannister was a heavy stockholder therein. [Tr. 133-134.]

On no possible theory could the mortgages have had any existence until their recordation on April 23rd. They could not, therefore, have been called into existence until after Mr. Russell had been informed, on the streets of Bakersfield, that the bankrupt was in financial trouble. He had such notice as put him upon inquiry, and had he followed such inquiry to the end he would have ascertained that the bankrupt was insolvent. It is of no importance that at that time Mr. Russell did not know, as claimed by him, that the bankrupt was insolvent. He knew that Bannister's house had been attached. [Tr. 164-137-131.] He knew that the Los Angeles Hay Storage Company was in financial difficulties with its creditors, and that Bannister was a heavy stockholder therein, and had he made inquiry he could readily have ascertained the insolvency of the bankrupt. [Tr. 133-134-141.]

It is the law that notice of facts which would put a reasonably prudent man upon inquiry is notice of all

the facts which a reasonably diligent inquiry would disclose.

In re Dorr (C. C. A. 9th Cir.), 198 Fed. 293;
R. H. Herron Co. v. Moore (C. C. A., 9th Cir.), 208 Fed. 134;
Coder v. McPherson (C. C. A., 8th Cir.), 152 Fed. 951;
In re State Printing Co. (C. C. A., 7th Cir.), 238 Fed. 775;
Stern v. Paper Co., 183 Fed. 235;
In re Edwards, 217 Fed. 102.

(D)

THE EFFECT OF THE CHATTEL MORTGAGE IS TO GIVE THE DEFENDANT A LARGER PERCENTAGE OF ITS CLAIM THAN OTHER CREDITORS OF THE SAME CLASS.

The evidence establishes the fact that defendant has received a larger proportion of its claim than other creditors of the same class. It is established by the evidence that on April 23rd, 1915, Bannister was insolvent, while the adjudication of bankruptcy only a short time thereafter was a judicial determination of that fact. Thus it has been established, both by evidence and judicial determination, that Bannister's liabilities exceeded, and exceeds, his assets, but if these mortgages, payment under which have been made to the bank, are to stand, the bank will have been paid in full. Bannister's payments on and subsequent to February 10th, 1915, aggregate $10,681.13 [Tr. 244], while payments subsequent to April 23rd, 1915, aggre-

gated $8,381.13, leaving a balance still due defendant of $488 [Tr. 243], and there remains $555 arising from the sale of the mortgaged automobile [Tr. 233], which is held by the trustee under order of the referee awaiting final determination of this suit. [Tr. 243.] And this sum is more than sufficient to cover said balance of $488.

Furthermore, Mr. Russell testified that the goods claimed to be mortgaged were worth, on April 23rd, 1915, more than they sold for. [Tr. 248.] So that it is clear that these mortgages at the date of their recordation operated to pay defendant in full, and further, since Bannister was insolvent, they operated to give defendant a larger percentage of its claim than other creditors of the same class, to-wit, unsecured creditors.

It is contended, however, that the rule that plaintiff must establish that defendant has obtained a larger percentage of its claim than other creditors of the same class is limited to other creditors who have *proven claims* against the bankrupt estate. In so contending counsel has evidently overlooked the phraseology of the statute.

Those transfers are voidable if, at the time of the recording of the transfer (if by law such recording is required), and being within four months prior to the filing of the petition in bankruptcy, the bankrupt be insolvent and the judgment or transfer *then* operate as a preference, and the person receiving it or to be benefited thereby, shall *then* have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the

trustee and he may recover the property or its value from such person.

Section 60b provides:

> "If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer *then* operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

It is clear, therefore, that in determining what constitutes a preference the elements of a preference must be determined as of the time of the recording of the instruments, and the question is whether, *at the time the mortgages were recorded,* the bankrupt was insolvent, and whether, *at that time,* the defendant bank had reasonable cause to believe that it was obtaining a preference, and whether, at that time, such transfer

operated as a preference by giving to the defendant a larger proportion of its claim than other creditors of the same class, to-wit, other unsecured creditors.

The rule contended for is not only violative of the statute, but also leads to a patent absurdity. Creditors may have, and frequently exercise, a year in which to file claims. Must the trustee, forsooth, delay action to set aside a fraudulent conveyance until all the claims have been filed against the estate? While the trustee is so delaying, the defrauding party may have left the country, or himself have become bankrupt.

Moreover, the authorities cited by counsel do not support his contention, as will readily be perceived by a perusal of them.

It is the law that it is not necessary to either plead or prove that claims have been filed with and allowed by the referee.

The law is well stated in Gering v. Leyda, 186 Fed. 110 (C. C. A., 8th Circuit), where the court says:

> "It is contended in behalf of plaintiffs in error that the trustee's petition failed to state a cause of action entitling him to recover a preference because it is not averred therein that at the time of the commencement of the action *the claims of any creditors had been proved and allowed against the estate of the bankrupt. In our opinion it was not necessary for the trustee to allege and prove that claims of creditors had been filed and allowed against the estate of the bankrupt prior to the commencement of the suit.* The trustee's petition alleged that at the time of the transfer in question the bankrupt 'was hopelessly insolvent, and that his indebtedness amounted to over $24,000,' and that

> the only unexempt property then owned by him was the stock of merchandise conveyed to plaintiffs in error, and we are of opinion that these allegations sufficiently charged that at the time of the transfer complained of the bankrupt was indebted to general creditors, who were not secured, and who were entitled to share in the preference recovered. We think the trustee's petition stated a good cause of action, for the recovery of a preference. Swarts v. Fourth Nat. Bank, 117 Fed. 1, 54 C. C. A. 387; Coder v. McPherson, 152 Fed. 951, 82 C. C. A. 99; Wright v. Skinner Mfg. Co., 162 Fed. 315, 89 C. C. A. 23; Tumlin v. Bryan, 165 Fed. 166, 91 C. C. A. 200, 21 L. R. A. (N. S.) 960; *In re* Leech, 171 Fed. 622, 96 C. C. A. 424."

In Coder v. McPherson (C. C. A., 8th Cir.), it is said:

> "As Armstrong was insolvent when he gave the mortgages their necessary effect was to enable one of his creditors to obtain a greater percentage of its debt than others of the same class, and they therefore created a preference under section 60a."

In Swarts v. Fourth National Bank, 117 Fed. 3 (C. C. A., 8th Cir.), Judge Sanborn, in delivering the opinion, says:

> "No one can become familiar with the bankrupt law of 1898 without a settled conviction that the two dominant purposes of the framers of that act were: (1) The protection and discharge of the bankrupt; and (2) the distribution of the unexempt property which the bankrupt owned four months before the filing of the petition in bankruptcy against him, share and share alike, among

his creditors. All the earlier sections of the act are devoted to the security and relief of the bankrupt, and, when the distribution of his property is reached, the provisions relating to it are all drawn from the standpoint of the insolvent, and not from that of his creditors. The rights and privileges of the bankrupt, and the equal distribution of his property, dominate every provision, while the rights, wrongs, benefits, and injuries of his creditors are always incidental, and secondary to these controlling purposes. Section 60a contains the legal and controlling definition of the preference specified in section 57g and the other parts of the Bankrupt Act. 30 Stat. C. 541, p. 562 Kimball v. E. A. Rosenham Co. (C. C. A.), 114 Fed. 85. 7 Am. Bankr. R. 718, 719; Pirie v. Trust Co., 182 U. S. 438, 21 Sup. Ct. 906, 45 L. Ed. 1171. But this definition of a preference was not written from the station of the creditor, but from that of the debtor. It is not the act of the creditor, but the act of the debtor, which gives it,—which produces it. The controlling thought is not the benefit or injury to the creditor, but the equal distribution of the property of the bankrupt among the holders of the provable claims against him. * * *

"Four months before the filing of the petition in bankruptcy, the bank had a claim against the estate of the insolvent for $60,000. Within that four months, it received $14,600 out of his estate, so that, when the petition in bankruptcy was filed, instead of a claim for $60,000 against the insolvent it held $14,600 of his money, and a claim against him for $45,400. The statement of these facts is itself a demonstration that if the bank can retain this money, and procure the allowance

of the balance of its claim, it will receive a greater percentage of its debt out of the estate of the insolvent than other creditors of the same class who receive no such payments. The insolvent has increased the funds of the bank $14,600, and it has diminished by $14,600 the property to be distributed among its creditors; and it is the depletion of the estate, to pay a larger percentage upon one claim against it than others of the same class will receive, against which the provisions of section 60a and section 57g are specifically leveled. The conclusion is irresistible that the payment to the bank of $14,600 gave it a preference over the other creditors of the bankrupt of the same class."

See also:

Jackman v. Eau Claire Nat. Bank, 125 Wis. 465, 115 Am. St. Rep. 955.

IV.

Defendant's Claim of Equitable Lien Is Without Merit. An Equitable Lien Will Never Be Found in Favor of One Guilty of a Constructive Fraud. It Will Not Be Declared Where the Goods Are Not Identified or Segregated and There Has Been a Commingling and Confusion With Other Goods. Neither Will It Be Declared as Against a Trustee in Bankruptcy Representing Creditors of the Estate Where, by the Provisions of the Bankruptcy Act Itself, the Alleged Lien Is Void.

The chattel mortgages on the stock in trade were, on January 12th, 1915, given entirely to secure antecedent indebtednesses, with the exception only of one note securing the sum of $1500. [Tr. 150.] When Bannister commenced doing business with the defendant bank he had an agreement with Russell, its cashier, to do business as he had been doing with the old Bank of Bakersfield, with which Russell had formerly been connected. [Tr. 235.] The bankrupt had been in the habit of giving chattel mortgages to the old Bank of Bakersfield which were never recorded, and Bannister says that it was the understanding that the mortgages should not be recorded until something should happen. [Tr. 132, 237.] Just before recording the mortgages Russell told his assistant cashier that he purposed recording the mortgages so that if anything should happen he could take possession and protect himself. [Tr. 241.] When Russell told Bannister that he had re-

corded the mortgages, Bannister said, "That is all right; that was the agreement." [Tr. 241, 242.]

The mortgages on the stock in trade, given January 12, 1915, itemized and specified the particular goods mortgaged. [Tr. 151.] Thereafter Bannister conducted his business as usual, sold portions of the mortgaged goods, and purchased other goods in lieu thereof. The goods were coming in and going out all the time. [Tr. pp. 149-150-171-172-177-178-179-188-194-195-205-206-249-252.]

Counsel contends that as goods were sold the money so received, less expenses, was paid to the bank, and that other goods were substituted in lieu of that sold, and that an equitable lien results therefrom. As a matter of fact, as the mortgaged goods were sold by Bannister in the ordinary course of business he used the proceeds thereof in various ways; he paid some of his old debts therefrom, paid labor bills, appropriated some of the money for his personal use, paid a portion thereof to the bank, and used a portion thereof in payment of current bills [Tr. 178, 217, 221 to 229.] Through the purchase of new goods, substituted in lieu of the mortgaged goods sold, the bulk of the property remained the same. [Tr. 179-188-194-195-196-200.] It does not appear, however, that the new goods purchased were paid for, and such could not have been the case if, as contended by counsel, the money received from the sale of the mortgaged goods was paid to the bank. (Appellants' Brief, p. 31.) The result is that through sales of the mortgaged property the indebtedness to the bank was reduced, while the

bulk of the property, consisting of the mortgaged goods and the new goods commingled and confused therewith, remained the same. [Tr. 200.] And now counsel has the temerity to claim an equitable lien upon the remaining property mortgaged, together with the new goods purchased and commingled and confused therewith, notwithstanding that by the transaction the bank has been partially paid, and other creditors have extended credit in the sale of the substituted goods. A lien is claimed, notwithstanding that the result of the transaction would be that the bank's debt has been decreased while its secret security would (in the event the asserted lien is held valid) be increased.

The bank, prior to the recordation of the mortgages on April 23rd, kept the existence of such mortgages a secret from the creditors [Tr. pp. 132-153, 233-241, 245-246], and during all this time the bank knew Bannister's method of conducting his business, knew that he was making sales of merchandise, and knew the condition of his books. [Tr. 245-246.] We contend that no lien, equitable or otherwise, attached to these goods. A lien or chattel mortgage upon property commingled and confused with other property not mortgaged renders the lien or the mortgage invalid. An equitable lien is a creation of equity, and from the very nature of the case cannot exist when the very basis upon which the lien is claimed to rest is tainted with constructive fraud. An equitable lien at best can exist only on designated property,—on property identified and segregated, and can not exist, as in this case, where its identity is lost by reason of its confusion

with other goods. It cannot exist as to creditors where it is required to be recorded and is not recorded, and record thereof is necessary in order to impart notice. *In short, it cannot exist where, by the provisions of the Bankruptcy Act itself, the lien is void.*

The Bankruptcy Act itself prescribes the liens which shall not be affected by the act as being those given for a present consideration "which have been recorded according to law, if record thereof was necessary in order to impart notice."

Section 67d of the Bankruptcy Act provides:

> "Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by this Act."

Section 67e of the Act provides, in part:

> "* * * And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the state, territory or district in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt."

The courts have repeatedly held that where a mortgage on a stock in trade is secretly given and withheld from record, and the mortgagor, with the consent and knowledge of the mortgagee, conducts his business as usual and confuses the new goods purchased with the mortgaged goods and pays to the mortgagee the proceeds of the sales of mortgaged goods, that such a mortgage constitutes a fraud on creditors and is invalid.

Scandinavian-American Bank v. Sabin, *227* Fed. 579 (C. C. A., 9th Cir.);
In re Hickerson, 162 Fed. 345;
In re Shaw, 146 Fed. 273;
Rogers v. Page (C. C. A., 6th Cir.), 140 Fed. 596;
Clayton v. Exchange Bank of Macon (C. C. A., 5th Cir.), 121 Fed. 630;
Tysor-Cheatham Mercantile Co., 178 Fed. 733;
Orr v. Park (C. C. A., 5th Cir.), 183 Fed. 683;
In re Duggan, 183 Fed. 405 (C. C. A., 5th Cir.).

In the case of Scandinavian-American Bank v. Sabin, *supra,* it was held that the instrument in question was nothing but a mortgage, and that inasmuch as it permitted a mortgagor to remain in possession and sell goods in the regular course of trade, that it was in fraud of creditors, under the laws of Oregon, the court saying:

"The rule is one calculated to promote fair dealing between a vendor of personal property and his creditors, or parties who are likely to become

creditors. In the present case there was nothing whatsoever, of record or otherwise, to indicate to any one with whom Sondheim might contract debts that the goods and merchandise on display in his store were incumbered in any manner whatever. It appears from the record that Sondheim purchased merchandise on credit to the value of thousands of dollars, and it is but reasonable to suppose that to a great extent he was enabled to do this by reason of the fact that the parties from whom he purchased looked upon his stock of merchandise as an asset and a source of payment in the event of the failure of Sondheim to meet his obligations. Such, at least, was the inevitable tendency of the situation, without regard to any actual fraudulent intent on the part of either the bank or Sondheim. It would indeed be a harsh rule which would permit the bank, under such circumstances, to retain and enjoy the fruits of a situation brought about by its own unjust and unfair acts and conduct, at the expense of the general creditors of the bankrupt."

In Orr v. Park, *supra,* the court says:

"No inventory or valuation of the stock of goods seems to have been made and furnished to Park, and no special examination of the stock made by him. Dunn Bros. remaining in possession of the goods, continuing business, and selling goods, just as before the mortgage was made; their failure to sign the mortgage and have it witnessed until from one to three months after it purports to have been made; their possession of the mortgage subsequent to their signing it; and the withholding it from record—are badges of fraud which were sufficient, in our opinion, to

warrant the judgment and finding of the referee that the mortgage was made to hinder, delay and defraud the creditors of said Dunn Bros., and was null and void, in which judgment and finding we concur. Blennerhasset v. Sherman, 105 U. S. 100-118, 26 L. Ed. 1080; Clayton v. Exchange Bank, 121 Fed. 630, 57 C. C. A. 656; Hilliard v. Cagel, 46 Miss. 309."

It is too clear for argument that the transaction in the instant case, being tainted with constructive fraud, from the very nature of the case an equitable lien—a creation of equity—cannot arise therefrom.

Furthermore, it is the law that an equitable lien cannot arise unless the property can be identified and segregated, and that it cannot exist, as in this case, where its identity is lost by reason of its confusion with other goods.

In re Bothe (C. C. A., 8th Cir.), 173 Fed. 597, where the court says:

"It appears without contradiction that Martin had six wagons of various kinds at the time he executed the mortgage. The only description of those conveyed was 'five wagons.' There was no segregation of any particular five wagons from the larger number owned by Martin, and no means were disclosed, in the mortgage or otherwise, for determining which of them were intended to be conveyed. For want, therefore, of a sufficient description to identify the property intended to be conveyed the mortgage was void as to the wagons."

The case of *In re* Flatland, cited by counsel, involved the validity of a chattel mortgage on property *then and thereafter to be placed within a certain store building.* In other words, the property mortgaged was subject to designation and segregation. It covered everything within the store building. Quite a different situation from the case at bar, where the mortgage covered only specified articles, a portion of which were sold in the ordinary course of business and other goods were substituted in their place, while the proceeds of the goods sold were paid to the bank. Furthermore, neither preferences nor constructive frauds are involved in the Flatland case, and the decision itself has been somewhat moderated in the more recent decisions of this court.

In this case, with the knowledge and implied consent of the bank, the bankrupt deliberately confused the mortgaged goods, and, having been so confused, the bank, after petition in bankruptcy was filed, took possession of all the confused property. That defendant is not entitled to an equitable lien is finally determined, however, by the Fourth Street National Bank v. Millbourne Mills Co.'s Trustee (C. C. A., 3rd Cir.), 172 Fed. 177, and the case of Security Warehousing Company v. Hand, 206 U. S. 415, 27 Sup. Ct. Rep. 720, affirming the opinion of Judge Baker of the Seventh Circuit.

The court, in the case of Fourth Street National Bank v. Millbourne Mills Co.'s Trustee, differentiated the case of Hurley v. A. T. & S. F., 213 U. S. 126, relied upon by counsel, from such a case as the case

at bar. The court, in analyzing the subject of equitable lien, says:

> "But the vital thing lacking, the same as in the case of the grain, was that there was nothing to negative the apparent ownership of the bankrupt company, in whose possession, and under whose control, to all intents and purposes, it was. Without this, it was presumptively, as it was actually, theirs, subject only to such rights as against the company, as the certificate holders might be entitled to assert before the rights of creditors had attached, with which, at this time, we are not concerned. To preserve the rights of such holders, as against creditors, either by way of equitable lien or pledge, it had to be openly and clearly indicated that the flour was theirs, without which the mere storing of it, by itself, in the basement, which in effect was all that was done, was of no avail. Sholes v. Asphalt Company, 183 Pac. 528, 38 Atl. 1029; Barlow v. Fox, 203 Pac. 114, 52 Atl. 57; * * *
>
> "It is, however, contended that, there being an intent to pledge, an equitable lien was at least created, which entitles the certificate holders to the fund. It is difficult to see how a transaction, which, for want of delivery, is ineffective as a pledge, can be pieced out so as to make it hold as something else. There would be little left to the established doctrine with regard to pledges if that was the case; and it is somewhat singular that, in all the litigation, where pledges of personal property have been upset, for want of a delivery, no one should have discovered this easy way out. This is not to say that an equitable lien, under some circumstances, may not exist; but only that

there is nothing to support it here. It never arises or is enforced except against property in the hands of a party to the original transaction out of which it is claimed to grow, or his voluntary representatives, or one who has notice of it and is affected with it as a superior right; within which all the cases cited in support of it will be found to fall. 19 Am. & Eng. Enc. (2nd Ed.) 36. It is not good as against a trustee in bankruptcy, taking title, in the interest of creditors, by operation of law, as is the case here. *In re* Olzendam Company (C. C.), 117 Fed. 179; *In re* Liberty Silk Company (D. C.), 152 Fed. 844; * * *

"The question of equitable lien is met and effectively disposed of by the Court of Appeals of the Seventh Circuit in Security Warehousing Company v. Hand, 143 Fed. 32, 74 C. C. A. 186, affirmed 206 U. S. 415, 27 Sup. Ct. 720, 51 L. Ed. 1117, which cannot be distinguished from the present case. 'The appellant lenders finally assert,' says Baker, J., 'that if they have neither the negotiable receipts of a public warehouseman, nor a pledge through an unequivocal possession by their agent, the security company, nevertheless they have "*equitable liens*" which entitle them to the possession of the property as against the trustee. The trustee succeeds, as of the date of the adjudication, not only to the bankrupt's title and possessory right to the property, but also to the right of the bankrupt's creditors to assert that the title and possessory right as to them is in the bankrupt.' Sections 70a(4) and 70a(5), 70e. * * * Liens that remain undisturbed are those that were good against both the bankrupt and his creditors immediately preceding the adjudication. * * * *The conclusion results not merely from a consideration*

*of the nature of the trustee's succession, but as well from the inhibitions of the act. Section 67a vitiates as liens 'all claims which for want of record or for other reasons' the bankrupt's creditors might have avoided as liens; that is, no secret liens or equities shall prevail against the trustee that were not good against the general unsecured creditors represented by the trustee. Section 67d protects 'liens given or accepted in good faith * * * and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice.' The liens thus saved are liens, not promises to give liens, not equitable claims, that what ought to have been done shall be considered done, but liens perfected according to law. 'Notice' as well as 'a present consideration' is necessary. If a chattel mortgage be given in good faith and for a present consideration, recording is not obligatory; but the imparting of notice is. Recording is one way; another is actual and continued change of possession.* If a pledge be similarly given, recording is not 'necessary in order to impart notice,' because no provision has been made that a record of the fact shall be notice of the fact; but what is 'necessary in order to impart notice' is the delivery of exclusive and unequivocal possession. We think that section 67d does not change section 67a into the meaning that 'claims, which for want of record or for other reasons' are not good liens as against creditors, are good liens as against the estate if the lender advanced his money without any actual intent to defraud unsecured creditors. He is chargeable with the constructive intent which is attributed to secrecy."

The language of Judge Baker, just quoted, evidently met the approval of the Supreme Court of the United States, for in determining the case they simply remarked:

> "Under the circumstances of this case we are satisfied that there was no valid pledge, *and no equitable lien in favor of the interveners which would take precedence of the title of the trustee by virtue of the special provisions of the Bankruptcy Act.*"

From the foregoing it is therefore clear that if the asserted lien would be void by virtue of any provision of the Bankruptcy Act itself, it could not be valid as an equitable lien.

It is therefore clear that an equitable lien cannot be established in this case, because—

(a) Defendant has been guilty of a constructive fraud;

(b) Because the original mortgaged goods could not have been identified or segregated, and the goods upon which the lien is now sought consisted of a portion of the mortgaged goods, together with other goods commingled therewith; and

(c) Because the rights of third parties intervened, and such lien would not be declared against the trustee in bankruptcy, representing creditors of the estate, since, by the provisions of the Bankruptcy Act itself, the alleged lien is void.

The Court Properly Overruled Objections to the Amendment and Denied Defendant's Application to Dismiss.

The original bill sought to have the mortgages set aside (1) as constituting a preference, (2) as being in fraud of creditors, and (3) as being void because on stock in trade of a merchant and not recorded, but failed to allege that prior to the execution of the mortgages or intermediate their execution and recordation, creditors existed. To correct this error the amendment was filed alleging that unsecured debts were created, both prior to the execution of the mortgage and subsequent to such execution, but prior to recordation thereof. The original bill, however, averred all the necessary elements requisite to constitute a preference. The averment that claims existed prior to the execution of the mortgages and that other unsecured claims were created intermediate their execution and recordation was an allegation of ultimate facts. To have enumerated the creditors would have been to have alleged evidenciary facts. The allegation that claims existed was no more a conclusion of law or fact than would have been an allegation in detail as to the existence of each of the claims. Furthermore, the trustee does not, as claimed by counsel, represent creditors who had established their claims against the bankrupt estate. The trustee represents all creditors whether they have established their claims or not, and must act in the interests of all. It was not necessary to have alleged the amount of proven claims and such allegation, if made, might have been stricken out as immaterial. It

is not true that if the mortgages were void they were void only as to those creditors whose rights arose intermediate the execution and recordation of the mortgages. They were void under state law as to all creditors, and under the bankruptcy law they were void as to all creditors as a preference and as being constructively fraudulent, and being void as to all creditors, and the bankrupt being insolvent, and it appearing that unsecured claims could not have been paid in full, it was unnecessary to detail the names of the creditors or the particular class to which they belonged.

If the mortgages are void only as to one of the creditors, it was void as to the trustee. The Bankruptcy Act entitles the trustee to avoid for the benefit of all creditors any transfer which any creditor might have avoided.

Section 70e of the Bankruptcy Act;
Remington on Bankruptcy, Vol. 2, Sec. 1738, and cases cited.

The case of Teague v. Anderson Hardware Company, 161 Fed. 765, cited by counsel, was a suit brought upon a bond given in lieu of a chattel mortgage executed by the bankrupt to the defendant. This is one of the early cases decided prior to the amendment of 1910, and at a time when, under the law, the trustee in bankruptcy did not represent all the creditors. The case did not, as here, involve any question relative to preferences or fraud. Furthermore, the case was decided by the District Court, and the Circuit Court of Appeals for that district has since declared a different rule in *In re* Duggan, 183 Fed. 405, where they hold

that even though the mortgage is void as to only one class of creditors, that it will nevertheless be set aside in a suit by the trustee, stating:

> *"If the mortgage were declared void as to one set of unsecured creditors and valid as to another set of unsecured creditors, it would result in an unequal distribution among creditors of the same class."*

In that case a chattel mortgage had been given by the bankrupt on his stock of goods and withheld from record by the mortgagee under a tacit agreement to do so because of the effect which the record would have on the mortgagor's credit. Such mortgage was declared void in a suit instituted by the trustee to set it aside.

From the rule that if the mortgages are void as to one creditor, they are void as to the trustee, it necessarily follows that in an action brought by the trustee it is not necessary to enumerate in detail the creditors that he represents.

We have already shown that, in reason and under the authorities, it is unnecessary to either allege or prove the amount of proven claims. (*Supra*, page . . .)

The case of *In re* Grainger, cited by counsel, was decided prior to the amendment of 1910, and involved no question as to preference or constructive fraud.

It must be borne in mind that this action is brought to set aside the mortgages upon several grounds. The trustee is certainly representative of all creditors in an action brought to set aside a transfer as being a preference or in fraud of creditors, and, while it may pos-

sibly be that the mortgages were void because not recorded, as against creditors only created between the execution and recordation of the mortgages, yet, if void as to them, it is void as to the trustee, as the trustee occupies the position of the most favored creditor, and the mortgages being void as to such creditor, it is unnecessary to allege the existence of other creditors.

However, assuming, though not conceding appellant's contention, rule 19 of the rules of practice for courts of equity provides that:

> *"The court, at every stage of the proceeding, must disregard any error or defect in the proceedings which does not affect any substantial rights of the parties."*

What has been said herein is equally applicable to defendant's objection to the court's ruling on introduction of testimony. The original bill alleged insolvency, the reasonable cause of defendant to believe that by recording the mortgages it would obtain a preference, and that the effect thereof was to give defendant a larger percentage of its claim than other creditors of the same class.

A-32

In the case A-32, the deed of trust was executed April 8th and recorded April 23, 1915, the same date as the chattel mortgages. The only question not discussed in case B-94 is, whether the bank received a preference by receiving and recording the trust deed. Bannister testified that he was in Los Angeles about

the first of April, at which time it was suggested to him that the Los Angeles Hay Storage Company should go into bankruptcy. [Tr. 129.] Bannister was a very heavy stockholder in that company. Bannister received a letter from Mr. Flory, who had suggested the bankruptcy to him, about April 7th; at that time he was in the bank practically every day. On April 8th Bannister went voluntarily to the bank and told them "they should have what protection he could give them," and explained to the bank that the Hay Storage Company was having trouble with its creditors. The bank knew at the time that Bannister was a stockholder in the Hay Company. [Tr. 133.] It simply knew that the Hay Company was in trouble with its creditors in Los Angeles, and that Bannister was a heavy stockholder in that concern. [Tr. 134.] Defendant, by this knowledge, clearly had cause to believe when Bannister told its officers that they could have what protection he could give them, that the taking of the trust deed would effect a preference, for the bank was then put upon notice of facts which would put a reasonably prudent man upon inquiry, and such notice is notice of all the facts which a reasonably diligent inquiry would have developed. It is admitted that Bannister's assets and liabilities on April 8th were the same as on April 23rd. He was therefore insolvent on April 8th. All the facts in B-94 properly applicable are to be considered in A-32 under stipulation. Therefore, both on April 8th and on April 23rd, a reasonably diligent inquiry would have developed that the taking and recording of the trust deed by the

bank would effect a preference in its behalf. All the rules applicable to pereferences, referred to in our discussion under B-94, are applicable to A-32.

It is proper to add that by stipulation it is agreed that the costs in case A-32 shall follow the main case of B-94.

Respectfully submitted,

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No. 2957.

United States Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Wm. H. Moore, Jr. *Appellee,* *vs.* National Bank of Bakersfield, et al., *Appellants.*	A-32
Wm. H. Moore, Jr., *Appellee,* *vs.* National Bank of Bakersfield, *Appellant.*	B-94

PETITION FOR REHEARING.

FILED
FEB 5 - 1918

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PETITION FOR REHEARING.

We respectfully urge that, in the learned opinion announced in the cases at bar, the court has, we believe, inadvertently fallen into the same error as did the trial court, with the result that the decision announced is not "the judgment of the law on the matter contained in the record." We shall endeavor to point out several reasons why the decrees of the District Court should be reversed—and not affirmed.

The equity of appellant's position requires us, preliminarily, to remind the court that the moneys sought to be recovered herein are the proceeds of property which was the *very product* of the defendant bank's loans—property which was acquired, and *only* could have been acquired, by Bannister by means of those loans—[Tr. pp. 187-194], also that those loans were made only upon the express agreement of the parties that the bank was to have a lien upon the property purchased therewith. [Tr. pp. 236.] In such a case the courts are loath to permit the intentions of the parties (honestly expressed at the time of the transactions in question) to be defeated by a trustee in the interests of general creditors who, obviously, have not been injured by the transactions nor as diligent as the defendant in protecting their claims. As was stated *In re* Automobile etc. Co., 176 Fed. 792:

> "There is always a strong equity in favor of a lien by one who advances money upon the property which is the product of the money so advanced. This was what the parties intended at the time, and to this, as already stated, there is and can be no objection in law or in morals." (Quoting Sabin v. Camp, 98 Fed. 974.)
>
> 176 Fed. 795.

Clearly, this is a case in which the trustee should be held to a strict compliance with the unquestioned rule of law requiring the trustee to sustain the burden of proving each element of a voidable preference. We venture to assert, with confidence in our contention, that the record here demonstrates the utter failure of the trustee to sustain that burden in several particulars.

A dominant purpose of the bankruptcy act is to effect the equal distribution of the bankrupt estate among those creditors *only* who have established their claims against the estate in the manner provided by that act. Section 57 of the Act provides for the proof, adjudication and allowance of creditors' claims and authorizes a trustee to recover any dividend paid upon a claim which, upon a reconsideration, has been rejected; while section 65 directs the declaration of dividends "on all *allowed* claims"; again the right to vote at the election of the trustee is, by section 56a, restricted to those creditors whose claims have been *allowed* by the referee, and section 66 provides that when all *allowed* claims have been paid, the balance of the estate shall be paid to the bankrupt. Where no claims are allowed, there are no dividends to be paid by the trustee, and in the absence of proof of any allowed claims the *sufficiency* of the assets is manifest.

The objection that the trustee failed to prove a deficiency of assets is not merely a technical one, for such proof constitutes not only a material, but an essential, element of a voidable preference, without proof of which the action must fail. To hold (as the opinion announced herein inferentially does) that this essential element has been established upon the mere showing, by the testimony of the bankrupt alone, that he was heavily indebted at the time the petition was filed, but that he also at the same time owned considerable property which he valued at more than his alleged debts aggregated, is to permit the trustee (upon the mere statement of the bankrupt that creditors exist)

to avoid transactions (valid except for the intervention of bankruptcy proceedings) and thereby to recover property which he cannot distribute to any of those creditors until they have *proven* their claims before the referee, which may never be and often is not done, and which cannot be so proven by the bankrupt's statements alone.

That this element of "deficiency of assets" must be established by the *record of the referee* appears to be well settled.

> Leavengood v. McGee, 91 Pac. 453, 50 Ore. 233:
>
> "But a method is provided by the procedure in bankruptcy whereby the claims of creditors may be legally adjudicated, and before the trustee should be permitted to attack by a suit in equity the conveyance of the bankrupt, he shall allege and prove by the *record of the referee* that such procedure has been followed, and that the claims on which he bases his contention have been ascertained and established."
>
> 91 Pac. 455.

> Mayhew v. Tobisman (Mo. 1912), 151 S. W. 436, 438:
>
> "Admitting that the conveyances under which the defendant claims are fraudulent, no right to avoid them exists, unless the property is needed to pay the claims filed against the bankrupt debtor; and this should be shown affirmatively by the petition. Mueller v. Bruss, 112 Wis. 406, 88 N. W. 229; Prescott v. Gallucio, 21 Am. Bankr. Rep. 229 (D. C.), 164 Fed. 618."

McKey v. Smith (Ill. 1912), 99 N. E. 695, 696:

"There was neither allegation nor proof that any claims of creditors had been allowed in the bankruptcy proceedings. In an ordinary bill of this character it is essential to the maintenance of the suit that the complainant shall have reduced his claim to judgment. No such requirement exists where a trustee in bankruptcy brings such a suit under the Bankruptcy Act, but it is essential that he show by his bill that the assets are insufficient to satisfy the claims of creditors. The trustee can only apply the assets upon *allowed claims*. If the assets in his hands are sufficient to pay *such claims*, there is no reason for the exercise of the equitable jurisdiction to set aside, as fraudulent, conveyances of property to third persons. Conveyances which may be set aside because they are constructively fraudulent as to creditors are valid between the parties, and under the Bankruptcy Act are valid against all persons except those entitled to share in the proceeds of such property—that is, *creditors whose claims have been allowed under the Act*. Unless it appears from the allegations and proof that the property so conveyed is needed to pay such claims, the trustee, whose rights are not superior to those of the creditors he represents, has no right to have such convevance set aside."

Mueller v. Bruss (Wis. 1901), 88 N. W. 229, 231:

"3. A third proposition is that the trustee cannot maintain this action unless it is shown by the complaint that he has not sufficient assets in his hands to satisfy the claims of the creditors of the

debtor. No such showing is made in the complaint. *For all that appears therein, there may be money and property enough in his hands to pay every claim filed against the debtor.* The conveyances attacked were good between the parties thereto. Ellis v. Land Co., 108 Wis. 313, 84 N. W. 417. Third parties are not allowed to impeach them unless it is necessary to do so in order that justice may be done. The trustee has no right superior to that of the creditors he represents. If we admit that the facts stated show such transfers to have been fraudulent, still no right to avoid them exists unless it appears that some one was harmed. It seems quite evident, without argument, that, unless it is made to appear that the property so conveyed is needed to pay the claims filed against the debtor, the trustee has no right to set such conveyances aside. The complaint is insufficient in this respect. It ought to show the amount of claims filed, and the value of the assets in his hands, so that the court may determine the necessity of resorting to this proceeding."

Roney v. Conable (Ia. 1904), 101 N. W. 505:

"PER CURIAM: The petition does not state, in substance or effect, that the property of the estate in the trustee's hands is *insufficient to pay the debts proved against the bankrupts.* Neither is there any evidence in the record to show such deficiency. In the absence of both allegation and proof of this material fact, we think the law is well settled that plaintiff is not entitled to a decree. The case of Deland v. Bank, 119 Iowa 368, 93 N. W. 304, seems to be directly in point upon this proposition."

Crary v. Kurtz (Ia. 1906), 105 N. W. 590, 593:

"But this does not obviate the necessity of the administrator, assignee, or trustee in bankruptcy in such a case alleging and proving that claims of creditors have been filed and allowed as contemplated by law. He may question the bona fides of the transfer of the debtor's property *in the interest of those creditors only to whom he may distribute the estate which shall come into his hands. That outstanding obligations exist is not enough.* Unless these are established and allowed, as authorized by statute or the act of Congress, he has no authority to pay them from moneys that may come in his hands, to say nothing of the property the debtor has transferred to others. And, unless it appears that the representative of the creditors may appropriate the proceeds of property in the hands of third parties to the satisfaction of the debtor's obligations, setting aside transfers to them as fraudulent would be of no practical advantage."

Shelley v. Nolen (Texas 1905), 88 S. W. 524, 530:

"We are of opinion that under the provision of the bankruptcy law authorizing this suit it is required that the petition should allege the amount of the claims of the creditors who were such at the time the fraudulent conveyances were made, and that the assets of the bankrupt estate in the hands of the trustee were insufficient to pay same, and these allegations should be supported by proof. *In re* House, 4 Am. Bankr. Rep. 603, 103 Fed. 616; Mueller v. Bruss (Wis.), 8 Am. Bankr. Rep. 447, 88 N. W. 229."

Lesser v. Bradford Realty Co. (N. Y. 1905), 95 N. Y. Sup. 933:

"As to the other points raised, my conclusion must be that the complaint is insufficient. It has been directly held that the trustee's right to maintain such an action as this depends upon the fact that he has not sufficient assets in his hands to satisfy the claims of the creditors; the reason for the rule being that, since the transfer is good as between the parties to it, the transaction should not be set aside at the instance or for the benefit of third parties, unless it is necessary that they be heard in the interests of substantial justice.

* * * * * * * *

Directly to the same effect is the case of Deland v. Miller & Cheney Bank (Iowa), 11 Am. Bankr. Rep. 744, 93 N. W. 304, *and I do not find that the rule stated in these cases has ever been questioned.*"

While in Gering v. Leyda, 186 Fed. 110, 112, the Circuit Court of Appeals (8th Circuit) held it was not necessary *in that case* for the trustee to allege and prove that claims of creditors had been allowed against the bankrupt estate, it must be noted that the facts there under consideration were such that the opinion there announced in no way contravenes the general rule established by the authorities hereinbefore cited. for (quoting from the opinion):

"The trustee's petition alleged that at the time of the transfer in question the bankrupt 'was hopelessly insolvent, and that his indebtedness amounted to *over $24,000,*' and that *the only* exempt *property* then *owned by him* was the stock of merchandise conveyed to plaintiffs in error."

A "deficiency of assets" was manifest when it was alleged and proved that the *only* property owned by the bankrupt was that sought to be recovered by that action, for there must have been at least three creditors with provable claims in order to have filed the petition and some creditors must have proven their claims in order to have elected a trustee, while the bankrupt estate had *no* assets other than the property sought to be recovered by that action. A different situation is presented, however, when the bankrupt possesses property (as did Bannister) other than that sought to be recovered by the action. A like ruling was also adopted by the District Court of West Virginia in *In re* Schoenfield (190 Fed. 53, 62), but for a similar reason, however.

> "The bankrupt under oath has listed in his schedules debts to the amount of $14,000 and declared himself to have *no assets*, therefore it was not incumbent upon the trustee in his petition to allege, nor, by evidence prove, 'that he has not sufficient assets in his hands to satisfy the claims of the creditors of Herman Schoenfield, bankrupt.' "

The record in the cases at bar exhibits a situation entirely different from that presented by the two cases last cited. Bannister scheduled assets to the amount of $59,157.60 and the evidence shows that he had a substantial amount of property even at the reduced valuations placed thereon by plaintiff's witness. Further, the allegation of the complaints [Tr. pp. 11 and 107] that the effect of the enforcement of the alleged preferences will enable the defendant to obtain a

greater percentage of its debt than any other creditor of the same class is but a conclusion of law, and Bannister's statement that his schedule correctly sets forth his indebtedness was not binding on the court or this defendant.

> Grant v. National Bank (N. Y. 1912), 197 Fed. 581:
>
> "The complaint contains no direct averment as to the actual amount of unsecured claims owing by the bankrupt. It is alleged that the schedules of the bankrupt show a certain amount of unsecured claims. This is equivalent to a statement that the bankrupt so represents and states, but such statement is in no way binding on the court or defendant, and *the schedules would not be proof or evidence to establish the amount of the indebtedness of the bankrupt as against the defendant. The allegation* that the effect of the enforcement of the judgment will be to enable the defendant herein, the National Bank of Auburn, to obtain a greater percentage of its said debt than other creditors of the same class, *is but a conclusion.*"

Bannister's statement (and there was no other evidence) was not proof that any of the items were legal obligations of the bankrupt estate (some of which, upon the face of the schedule, were outlawed) [Tr. p. 157], or that the referee had allowed, or ever would allow, them as approved claims against the bankrupt estate. For all that appears, and it must be remembered that the burden of proof is upon the trustee, there may have been a number of reasons why the referee would, and did, refuse to allow all of the alleged

debts scheduled. The most that can be said for the record on this point is that at the time the schedule was filed there were certain accounts which *Bannister* considered outstanding and unpaid, but, as was said in Crary v. Kurtz, *supra, "that outstanding obligations exist is not enough."*

Evidence that Bannister was insolvent and that the effect of the enforcement of the transfers in question will result in the defendant's debt being paid in full obviously does not, in the absence of proof of the amount of the assets of the bankrupt estate and of the proven claims which alone are entitled to share therein, sustain the trustee's burden of proving that the property sought to be recovered is necessary to pay claims established in the only method provided for proving them against the bankrupt estate.

Nor does it logically follow, from the fact that creditors are permitted to file claims at any time within a year of the adjudication, that the trustee need not prove by the record of the referee that the property sought to be recovered is *necessary* to pay *allowed* claims. *Unless* and *until* there is a deficiency of assets to pay such claims there is no necessity of, nor authority in the trustee for, resorting to such an action; and the law will not countenance such a proceeding (which in the absence of an established deficiency is not only useless but unwarranted and unjust) merely because creditors having claims, *possibly* provable, *may* some time within the year see fit to avail themselves of the privilege of filing claims, which *if* allowed would result in a deficiency of assets. If, by reason of the

creditors' own delay in taking advantage of the privilege accorded them of filing their claims, the trustee is delayed in bringing such an action, the consequences of such a delay must properly be borne by those whose laches occasioned it, while third parties, whose alleged preferences are perfectly valid in the absence of such deficiency, should not, nor should the bankrupt estate, be subjected meanwhile to expense by reason of litigation which may prove utterly useless.

The record on these appeals is devoid of evidence of the existence of *any allowed claim* against the bankrupt estate. It does not appear but that the trustee has sufficient property in the estate with which to fully discharge every allowed claim.

In order to sustain the burden of proving that the enforcement of the transfers sought to be avoided will operate to the injury of some creditor whom he represents, the trustee must not only show that claims have been proved and allowed against the bankrupt estate, but he must also show the aggregate of such claims and that the amount of the assets of the estate is such that the defendant bank will, by reason of the transfer sought to be avoided, receive on its claim a larger percentage than the creditors whom the trustee represents will thereby receive on their proven claims. While the record does show that the bankrupt owned considerable property, other than that sought to be recovered herein, it does not disclose the amount of the assets of the bankrupt estate; and there is no evidence as to what property the trustee actually received or recovered, nor its valuation, nor what he realized or could realize

thereon out of which to pay allowed claims. Evidence as to what property Bannister claimed to have possessed at or previous to the time he filed his schedule was not proof or evidence of the amount of assets that came into the possession of the trustee, either from the bankrupt or by recovery from third parties; nor was evidence concerning the value of Bannister's property on April 8, and April 23, 1915 (to which dates only was the evidence concerning valuations addressed), either evidence or proof of the value of the assets of the bankrupt estate, or of the amount realized thereon by the trustee out of which to pay allowed claims; nor evidence or proof of the amount of the assets of the estate at the time the transfers were sought to be avoided, to-wit, when the complaints herein were filed, nor at the time of trial. In the absence of proof of either the assets or obligations of the bankrupt estate, it was impossible for the court to determine that the creditors, if any, of the bankrupt estate would be injured by the enforcement of the transfers sought to be avoided.

Another point we consider deserving of reconsideration is the question of whether the defendant had reasonable cause to believe preferences would be effected by recording and enforcing the trust deed and the mortgages covering the automobile and the warehouse building.

As all dealings between Bannister and the defendant bank respecting the transactions in question were conducted through the cashier, Russell [Tr. pp. 148 and 186], the determination of this question involves

an analysis of the evidence as to what Russell knew, and could reasonably have learned had he pursued such inquiries as would have been made by an ordinarily prudent man under the same or similar circumstances. Without here repeating the summary of the evidence on this point, which is fully set forth on pages 16 to 22, both inclusive, of appellant's brief herein (of which summary we respectfully request a reconsideration by the court in this connection), it may be said that the record shows Russell knew Bannister owned, April 8 and 23, 1915, considerable property which Russell considered to be worth, at a fair valuation, a total of $51,200.00 exclusive of his interest in the Los Angeles Hay and Storage Company and his claim against said company of approximately $17,000.00—the amount of the loans made by the Security Trust Company of Bakersfield, and by the defendant, upon portions of Bannister's property indicated that Russell's valuations were not excessive. It further appears that Bannister's liabilities, so far as known to Russell, then aggregated approximately $28,000.00, leaving an equity of $23,200.00 exclusive of his $17,000.00 claim against the Los Angeles Hay and Storage Company, at least a portion of which Bannister had informed Russell he expected to realize. [Tr. pp. 137, 184, 240.] In the opinion announced herein the court was of the opinion that Russell knew, before placing the trust deed and mortgages of record, that Bannister's Hollywood house had been attached and that the Los Angeles Hay and Storage Company was in financial difficulties, and that he (Russell) was

thereby put upon inquiry. We respectfully urge that had Russell pursued such inquiry it would not have reasonably led to knowledge of Bannister's insolvency. The only evidence of the condition of the Los Angeles concern was Bannister's statement [Tr. p. 143] that he thought its liabilities, including his $17,000.00, exceeded its assets by not more than $28,000.00. Included among the liabilities were certain of its notes guaranteed by Bannister. [Tr. p. 167.] Hence Bannister's stockholder's liability, after deducting his claim (he owning about 60 per cent. of its stock, Tr. pp. 135-6), could not exceed $6600.00, while Wells' claim, upon which the attachment had been issued, amounted to $1789.57. [Tr. p. 164.] Therefore, had Russell pursued an inquiry as to the attachment against Bannister and as to the extent of his liability as a stockholder in the Los Angeles concern, he would have found Bannister still solvent, so far as Russell's information went, by a margin of $14,700.00. None of the scheduled items of indebtedness to non-resident creditors and the Bakersfield creditors, except to the amount of $4,000.00 to the latter, were shown to have been known to Russell at any time or to have appeared upon Bannister's books; in fact the contrary was the case. [Tr. p. 240.] Neither was Russell shown to have been put upon inquiry as to their possible existence nor is it reasonable to suppose that Bannister would have conceded his insolvency to Russell, for it appears [Tr. p. 242] that even after the attachment and the failure of the trustee's plan of financing the Los Angeles concern and the recordation of the trust

deed and mortgages, he still maintained to Russell that he was solvent, though they were trying to put him in insolvency; and no doubt he honestly thought so, for at that time he did not know that he was responsible for a stockholder's liability in the Los Angeles concern, and did not find that out until the petition in involuntary bankruptcy was filed on May 5th [Tr. pp. 182-3], and did not consider that the affairs of the Los Angeles concern had anything to do with his Bakersfield business, which he kept segregated at all times. [Tr. p. 169.]

Such a showing was far short of sustaining the trustee's burden of proving the existence on the part of the defendant bank of the element of "reasonable cause to believe" by *"a fair preponderance of all the evidence in the case."* As was said in Tumlin v. Bryan, 165 Fed. 166, 169:

> "Reasonable cause to believe that a preference was intended cannot be held to be proved by circumstances that would merely excite *suspicion.* And circumstances may seem suspicious *after* the bankruptcy occurs that would not appear unusual at the time of their occurrence, and would then have presented no 'reasonable cause' on which to found a belief of intended preference. Merchants and other business men constantly continue to make payments up to the very eve of failure, and it would be disastrous to have them set aside on slight proof or mere suspicion."

Likewise in the leading case of Grant v. National Bank, 97 U. S. 80, 81:

> "Some confusion exists in the cases as to the meaning of the phrase, 'having reasonable cause to believe such a person is insolvent.' *Dicta* are not wanting which assume that it has the same meaning as if it had read, 'having reasonable cause to suspect such a person is insolvent.' But the two phrases are distinct in meaning and effect. It is not enough that a creditor has some cause *to suspect* the insolvency of his debtor; but he must have such knowledge of facts as to induce a reasonable belief of his debtor's insolvency, in order to invalidate a security taken for his debt. To make mere suspicion a ground of nullity in such a case would render the business transaction of the community altogether too insecure. It was never the intention of the framers of the act to establish any such rule. A man may have many grounds of suspicion that his debtor is in failing circumstances, and yet have *no cause for a well-grounded belief* of the fact. He may be unwilling to trust him further; he may feel anxious about his claim, and have a strong desire to secure it,—and yet such belief as the act requires may be wanting. Obtaining additional security, or receiving payment of a debt, under such circumstances is not prohibited by the law. Receiving payment is put in the same category, in the section referred to, as receiving security. Hundreds of men constantly continue to make payments up to the very eve of their failure, which it would be very unjust and disastrous to set aside. And yet this could be done in a large proportion of cases if mere grounds of suspicion of their insolvency were sufficient for the purpose.

"The debtor is often buoyed up by the hope of being able to get through with his difficulties long after his case is in fact desperate; and his creditors, if they know anything of his embarrassments, either participate in the same feeling, or at least are willing to think that there is a possibility of his succeeding. To overhaul and set aside all his transactions with his creditors, made under such circumstances, because there may exist some grounds of suspicion of his inability to carry himself through, would make the bankrupt law an engine of oppression and injustice. It would, in fact, have the effect of producing bankruptcy in many cases where it might otherwise be avoided.

"Hence the act, very wisely, as we think, instead of making a payment or a security void for a mere suspicion of the debtor's insolvency, requires, for that purpose, that his creditor should have some reasonable cause to believe him insolvent. He must have a knowledge of some fact or facts calculated to produce such a belief in the mind of an ordinarily intelligent man."

We do not believe that facts were brought home to the defendant bank such as would put an ordinarily prudent man upon inquiry which, if pursued, would have reasonably led to a knowledge of Bannister's insolvency, to-wit, that the aggregate of his assets at a fair valuation were not sufficient in amount to pay his debts. (*In re* Eggert, 102 Fed. 735.)

Finally, we desire to point out that the situation with respect to the mortgage upon the warehouse building and that upon the automobile is entirely dif-

ferent from that of the various mortgages upon Bannister's stock in trade. Each of the former covered mortgageable property, was given for a valuable present consideration [Tr. pp. 152, 193], and both were recorded April 23, 1915, prior to the bankruptcy proceedings. As to these, it cannot be said either that the property was not capable of being mortgaged, or that there was a substitution or confusion of the mortgaged goods. Thus, we have an express agreement in writing whereby specific mortgageable property is clearly identified as security for a definite obligation, created for a present consideration and in entire good faith, and resulting in an equitable lien, enforceable whether the property is in the hands of Bannister or of third parties, not *bona fide* purchasers for value—to which latter class the trustee in bankruptcy does not belong even under the amendment of 1910 to section 47a of the Bankruptcy Act. As was said in Root Mfg. Co. v. Johnson, 219 Fed. 397:

> "This doctrine of equitable liens is fundamental in equity whenever the intention, bona fides, identity, and segregation appear, without perfection as a common-law pledge by actual possession in the pledgee; and Walker v. Brown, *supra,* is an instructive case for its definition and application. It defines the rule to be (in substance) that an express executory agreement in writing, whereby specific property or a fund is clearly identified to constitute security for a debt or other obligation, creates an equitable lien upon the property or fund, enforceable whether the property is in the

hands of the promisor, or of third parties not *bona fide* purchasers for value."

219 Fed. 406.

Recent cases in which an equitable lien has been upheld as against a trustee in bankruptcy are:

Sexton v. Kessler, 225 U. S. 90, and

Gereey v. Dockendorff, 231 U. S. 513.

Wherefore, for the reasons here urged, petitioner respectfully prays that the decision of this court affirming the decrees of the district court be set aside, and petitioner granted a rehearing, and that said decrees, and each of them, be reversed.

WM. J. HUNSAKER,
E. W. BRITT,
G. HAROLD JANEWAY,
Attorneys for Petitioner.

The undersigned, counsel for the petitioner, hereby certify that, in their judgment, the foregoing petition for rehearing is well founded, and that it is not interposed for delay.

WM. J. HUNSAKER,
E. W. BRITT,
G. HAROLD JANEWAY,
Attorneys for Petitioner.

2553

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE SOUTHERN PACIFIC COMPANY, a Corporation,
THE SOUTHERN PACIFIC RAILROAD COMPANY, a Corporation,
HOMER S. KING, Trustee, JAMES K. WILSON, Trustee,
THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation,
THE EQUITABLE TRUST COMPANY OF NEW YORK, a Corporation,
THE KERN TRADING & OIL COMPANY, a Corporation,

Appellants,

vs,

THE UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

Filed
MAR 23 1917
F. D. Monckton,
Clerk

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TABLE OF CONTENTS

	Page
Names and Addresses of Attorneys	vii
Citation	v
Caption, District Court	1
Bill of Complaint	2
Answer of Defendants other that The Equitable Trust Company	23
Proceedings Under Section 20 of the Judicial Code	35
Minute Order of March 28, 1912	35
Minute Order of April 9, 1912	36
Minute Order of January 18, 1915, spreading on minutes order creating Special Term	37
Minute Order of January 18, 1915, spreading on minutes stipulation and order re designation of Judge Bean and hearing at Los Angeles	39
Answer of The Equitable Trust Company	42
Orders extending and enlarging time to take testimony	53
Order of January 29, 1912	53
Order of March 14, 1912	54
Order of August 12, 1912	58
Order of September 21, 1912	60
Order of December 2, 1912	63
Order of February 3, 1913	65
Order of March 21, 1913	67
Order of May 7, 1913	69
Memorandum of Conclusions of the Court	70

Page

Final Decree..... 80
Orders enlarging and extending time to present Statement of Evidence..... 84
Order of February 12, 1916..... 85
Order of February 19, 1916..... 86
Order of March 17, 1916..... 87
Order of May 15, 1916..... 89
Order of May 31, 1916..... 90
[2A]
Orders enlarging and extending time to present Statement of Evidence (con.):
Order of September 18, 1916..... 90
Order of October 4, 1916..... 92
Order of October 19, 1916..... 92
Stipulation of Counsel with reference to Statement of the Evidence on Appeal, filed December 1, 1916..... 94
Stipulation of Counsel as to setting appeal for argument..... 98
Stipulation of Parties with reference to Condensed Statement of Evidence, filed January 27, 1917..... 99
Order approving Statement of Evidence on appeal 101
Condensed Statement of Evidence, transcribed, compiled and numbered as set forth in the stipulation of January 27, 1917....1 to 3887
Petition for and Order Allowing Appeal..... 3887
Assignment of Errors..... 3890
Bond on Appeal.....3895
Praecipe for Transcript of Record..... 3900
Clerk's Certificate to Transcript..... 3903
[3A]

CITATION ON APPEAL

In the District Court of the United States for the Ninth Circuit, Southern District of California, Northern Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC COMPANY,
(a Corporation)
THE SOUTHERN PACIFIC RAILROAD COMPANY, (a Corporation),
HOMER S. KING, (Trustee),
JAMES K. WILSON, (Trustee),
THE CENTRAL TRUST COMPANY OF NEW YORK, (a Corporation)
THE EQUITABLE TRUST COMPANY OF NEW YORK, (a Corporation),
THE KERN TRADING & OIL COMPANY,
(a Corporation),
Defendants.

United States of America, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at San Francisco, State of California, within thirty days from the date of this citation pursuant to an order allowing an appeal to the defendants filed and entered in the clerk's office of the District Court of the United States for the Southern District of California, Northern Division,

from a final decree signed, filed and entered upon the ninth day of August, nineteen hundred and fifteen, in that certain suit in equity, being Number Two Hundred and Twenty-One, wherein the United States is plaintiff, and is appellee herein, and the Southern Pacific Company, The Southern Pacific Railroad Company, Homer S. King, Trustee, James K. Wilson, Trustee, The Central Trust Company of New York, The Equitable Trust Company of New York, [5A] and the Kern Trading and Oil Company are defendants and are appellants herein, to show cause, if any there be, why the decree rendered against said defendants, appellants herein as in said order allowing said appeal should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable

ERSKINE M. ROSS,

United States Circuit Judge for the Ninth Circuit, this 29th day of January, 1916.

ERSKINE M. ROSS,

Circuit Judge and Judge of the United States Circuit Court of Appeals for the Ninth Circuit. **[6A]**

[Endorsed]: Orig. No. C. C. 221. In the District Court of the United States for the Ninth Circuit Southern District of California, Northern Division. United States, Plaintiff, vs. Southern Pacific Company, et al., Defendants. Citation. Filed Feb. 4, 1916, Wm. M. Van Dyke, Clerk, By R. S. Zimmerman, Deputy Clerk. Guy V. Shoup, Charles R. Lewers, Joseph H. Call, Of Solicitors for Defendants. Received copy of the within this 31st day of Jan. 1916. Albert Schoonover, U. S. Atty., Robert O'Connor, Assistant. **[7A]**

Names and Addresses of Attorneys

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For Appellee:

(The United States of America)

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GENERAL INDEX TO WITNESSES

	Pages of Original Transcript				
	Direct	Cross	Redirect	Recross	Herein
Allison, Chas. A.,	3601	3622	3631		1999
Anderson, Ira M.,	158	181	194	197	153
			198		
Anderson, Frank M.	4834	5119	5268	5281	2373
			5288	5290	
			5296	5297	
Armstrong, Geo. W.	8129	8141	8175		3493
		8176	8203	8206	
Allen, Noah	8579	8587	8605		3579
Archer, Judge Osceola,					
	8227	8230			3515
Bandettini, A.	3004	3013	3018	3019	1807
Barlow, C. A.	3669	3679	3701	3702	2006
				3703	
Barrett, Parker	942	949			523
Barrett, Frank	819	827	837	839	478
			840		
Bass, M. B.	8263	8272	8289	8310	3524
			8314	8316	
			8319	8318	
Battee, E. L.	3715	3720	3732	3734	2036
			3734		
Bell, L. D.	2983	2993	2998	3002	1802
			3003		
Bettison, I. N.	8210	8212			3512
Blaffer, Robert Lee,	8241	8248	8260		3515
Blodget, H. A.	605				360
	633	643			

	Direct	Cross	Redirect	Recross	Herein
Bowler, Paul D.	8044	8047	8079	8081	3473
Branner, John Casper	1377	1389	1420	1427	1000
			1428	1429	
			1430		
Brisco, Charles	494	508	524	525	334
			526		
Burks, Chas. T.	3960	3970	3995	3995	2059
Chapman, I. N.	415	422	426		313
Cheek, J. R.	8558	8566			3572
Cooley, W. H.	3031	3051	3057		1808
Cunningham, Charlotte D.					
	2003	2015	2026		1319
Davidson, W. H.	8110	8114	8126		3488
Davidson, Ben S.	8606	8610	8614	8615	3582
			8615		
Dennee, A. C.	8556	8490	8495		3556
Doan, L. E.	3997	4006	4032		2068
Dover, H. P.	776	781	791	793	461
Drouillard, S. C.	30	43	70	75	114
			82		
Dumble, E. T.	5986	6044	6235		2896
	5817				
Dunlop, S. J.	3061	3072	3097		1819
Dyer, B. T.	3909	3928	3956	3957	2049
			3958	3959	
Eberlein, Chas. W.	1692				1032
	1723				
	1778	1848	1977	1966	
			2002		
Ewing, D. S.	4634	4642	4658	4658	2248
Farnum, N. C.	853	879	931	939	493

	Direct	Cross	Redirect	Recross	Herein
Finney, Edward C.	2366	2389			1580
Gleaves, James M.	2	4			104
Goodyear, H. C.	3020				1816
Graham, E. S.					1979
Graham, Robert E.	4214	4226	4260	4261	2130
			4263	4264	
Greene, L. E.	9623	9705	9706		3676
Greene, Henry A.	3705	3710	3714		2035
Griffin, Thomas J.	2028	2051	2077		1324
Haberkern, Charles F.	556	563	576	577	349
			578		
Hall, Fred H.	3099	3108	3134	3135	1822
Hart, Harry J.	4120	4128	4155	4156	2092
Hill, W. H.	13	14			109
Hively, Chas. A.	4354	4362			2159
Hoehling, A. A., Jr.					1339
Hood, William J.	7851	7859			3395
Howe, Benjamin M.	3237	3248	3272	3275	1882
			3281		
Howk, B. K.	3180	3204	3232	3236	1841
Hotchkiss, O. E.	4105				2086
Hubbard, M. T.	841	848	852		488
Jackson, Dan M.	8520	8525	8533		3566
Jean, John	83	90	94	95	127
			99		
Jones, W. T.	8083	8091			3482
Kaerth, J. W.	696	699			416
Kay, E. W.	4090	4098	4103	4103	2084
Kerr, John P.	4186	4194	4209	4211	2122
Kimble, Fred	4159	4165	4183	4184	2116
Kingsbury, J. W.	10143				3686

	Direct	Cross	Redirect	Recross	Herein
Kinsey, David	2957	2968	2974	2980	1794
			2981	2982	
Klipstein, T.	549	553	553	554	347
Kruttschnitt, Julius	6287	6332	6434	6445	3079
Lamont, Charles W.	1079	1087	1092	1093	579
Lee, B. K.	295	309	318	319	224
			320	323	
Lightner, A. T.	3396	3406	3427		1977
Lang, John	3326	3334	3349	3351	1953
			3354		
Lowe, F. D.	129	143	157		145
Luke, W. J., Jr.	4766	4862			2255
Maddux, D. W.	3355	3359	3368		1970
Martin, F. Oskar	528	532	534	535	343
			546	546	
	1174	1189			
		1260	1327	1330	609
Meves, C. H.	3634	3640			2003
Miley, E. J.	2875	2895	2949	2954	1707
McCay, James F.	681	688	693		409
McCracken, George Q.					3584
	8616	8618	8629	8631	
McClimans, John I.	3300	3305	3322		1931
McClintock, H. H.	3369	3378	3394	3394	1973
McKittrick, W. H.	953	966	990	993	527
			995	996	
McMurtry, L. B.	4033	4052	4082		2076
	4086	4087	4088		
Nevill, F. I.	8321	8350	8432	8437	3539
			8440	8441	

	Direct	Cross	Redirect	Recross	Herein
Ochsner, W. H.	4391	4445			2168
		4519	4580	4611	
			4632		
Ogden James A.	3442	3448	3465	3468	1882
Olcese, Louis V.	2839	2854	2854	2855	1697
			2856		
Ott, W. E.	362	380			272
Overton, Eugene	3521	3530	3543	3543	1988
Owen, Erwin W.	2547	2630	2636	2641	1607
Parks, J. R.	8534	8540			3569
Pollard, John A.	3545	3576			1993
Prutzman, Paul W.	4332	4349			2150
Russell, Robert H.	7872	7877	7922		3402
Ryan, Edwin C.	2458	2467	2519	2531	1597
Sarnow, F. J.	199	213			164
Sarnow, Ludolph G.	101	113	125		133
Scupham, John R.	1096	1107	1134	1141	584
Shannon, Samuel	4266	4274	4304	4306	2139
			4307	4307	
			4311		
Shaw, James M.	5299	5456	5489	5492	2742
			5493		
Shay, Frank	7033				3122
Shreve, H. M.	748	764	774		446
Snell, Albert Adam	8632	8637	8652	8652	3586
			8654		
Sterling, E. A.	8442	8445	8453	8453	3552
			8454	8454	
Stone, George A.	1702	1714	1716	1720	1028

	Direct	Cross	Redirec	Recross	Herein
Storke, T. M.	3736	3755	3775		2040
			3777	3780	
			3781		
Stewart, Geo. W.	10347	10443	10457		3751
Sylvester, W. G.	580	593			355
Thomas,	3136	3149	3171	3176	1827
			3177	3177	
			3178	3178	
Taff, J. A.	5495	5573	5752	5780	2749
"Testimony Omitted,"					(3199)
Thompson, Henry M.	262	280	293		201
Thompson, Mrs. C. R.					
	3787				
	4661	4764	4764		2047
Thompson, C. R.	3795	3866	3876	3908	2048
			3908		
Tracy, Theodore	3282	3285	3297		1929
Treadwell, J. B.	708	726	734	740	424
			743	747	
	7927	7948	8033	8036	3413
			8039	8039–43	
Veatch, A. C.	23				111
	1338				
	1431	1434	1632	1650	687
Wagy, J. I.	326	338	352	354	237
			356	358	
Wagy, M. S.	235	245	253	253	174
			256	256	
Waugh, M. S.	4312	4321			2145
Wible, Samuel P.	427	452	480	486	317

	Direct	Cross	Redirect	Recross	Herein
Whittier, Colon F.	796	801	809	811	468
			813	814	
			815		
Whittier, M. H.	3469	3479	3489	3495	1984
Williams, P. G.	7038	7083			3122
	9340				3590
White, W. E.	7098				3152
Youle, W. E.	997	1025	1069	1072	540
			1078		

ALPHABETICAL INDEX OF EXHIBITS

Page

Affidavits:

As to posting notice of land selections..... 3860
C. W. Eberlein selection of lands..... 3832
Publication of notice of land selections..... 3857

Associated Oil Company:

Abstracts of Title of Stock..... 3660–3675
Annual Statements, Feb. 24, 1903 to Dec. 31, 1912..... 3593–3608
Minutes of Executive Committee..... 3613–3647
Production..... 3125–3148
Statements of Expenditures..... 3123

Check:

T. J. Griffin, Aug. 28, 1903..... 3540

Comr. G. L. O.:

Comr. Fimple to Ryan, Dec. 10, 1903..... 1547
Comr. Fimple to R. & R. Feb. 11, 1904..... 1552
Comr. Fimple to R. & R. Feb. 11, 1904..... 1555
Directing allowance of selection..... 1508
Comr. Richards to R. & R. Feb. 20, 1904... 1557
Letter to R. & R. revoking suspension, Aug. 18, 1903..... 1513
Letter to R. & R. relieving from suspension 30–21, Sep. 22, 1903..... 1520
Letter to R. & R. Feb. 28, 1900..... 1524
Letter to Ryan to examine lands, Oct. 23, 1903..... 1542
Letter to R. & R. to relieve from suspension on Ryan report, Feb. 11, 1904..... 1555

Page

Elk Hills Oil Wells—Anderson's report on (1912):
Number and depths of wells 2491
Rate of decline 2495
Production costs 2502, 2505, 2516
Value of oil 2516
Time and cost of well 2522, 2033
Cost of operation 2537
Kern Trading & Oil Co:
List for transfer 3064
Lease from S. P. Co 2961
Leases:
S. P. Co. to Andrizzi Olcese Co 1698
S. P. Co. to K. T. & O. Co 2961
Letters:
Bass to Markham, Dec. 30, 1903 3535
Branners to Chase, Oct. 18, 1910 1989
Chambers to Eberlein, Oct. 12, 1903 1472
Chambers to Eberlein, Sep. 22, 1903 1518
Chambers to Eberlein, Oct. 24, 1903 1480
Chambers to Eberlein, Nov. 30, 1903 1481, 1482
Chambers to Eberlein, Dec. 10, 1903 1482
Chambers to Eberlein, Dec. 16, 1903 1484
Chambers to Eberlein, Jan. 13, 1904 1486
Chambers to Eberlein, Feb. 13, 1904 1506
Chambers to Eberlein, Feb. 13, 1904 1490
Chambers to Eberlein, Feb. 13, 1904 1507
Chambers to Eberlein, Mar. 7, 1904 1492
Chambers to Eberlein, Mar. 9, 1904 1494
Chambers to Eberlein, Mar. 15, 1904 1495

Page

Chambers to Eberlein, Apr. 11, 1904..... 1498
Chambers to Eberlein, Aug. 5, 1904..... 1499
Chambers to Eberlein, Aug. 18, 1904..... 1501
Chambers to Eberlein, Sep. 21, 1904..... 1502
Chambers to Eberlein, Dec. 16, 1904..... 1503
Chambers to Eberlein, Mar. 7, 1904..... 1510
Chambers to Comr. Oct. 7, 1903..... 1539
Chambers to Comr. Nov. 30, 1903..... 1544
Chambers to Herrin Dec. 16, 1903..... 1483
Chambers to Madden Aug. 19, 1903..... 1512
Chambers to Kruttschnitt, Oct. 12, 1903.... 1474
Comr. Fimple to Ryan, Dec. 10, 1903..... 1547
Comr. Fimple to R. & R. Feb. 11, 1904..... 1555
Comr. Fimple to R. & R. Feb. 11, 1904.... 1508
Comr. Fimple to Ryan directing examination of lands, Oct. 23, 1903..... 1542
Comr. Fimple to R. & R. revoking suspension on Ryan report, Feb. 11, 1904..... 1555
Comr. Fimple to R. & R. Aug. 4, 1904..... 3852
Comr. Richards to R. & R. Feb. 20, 1904.... 1557
Comr. Richards to R. & R. revoking suspension, Sep. 22, 1903..... 1520
Comr. Richards to R. & R. revoking suspension, Aug. 18, 1903..... 1513
Comr. Herman to R. & R. Feb. 28, 1900..... 1524
Comr. Macy to R. & R. Apr. 5, 1904, relieving suspension 30–23..... 1568
Cummings', special agent, to Comr. G. L. O. July 13, 1900..... 3868
Cummings to Comr. July 13, 1900..... 1527

Page

Dumble to Owen, Sep. 11, 1902 1609
Dumble correspondence in re K. T. & O. Co. 2923–2960
Eberlein to Cornish, Sep. 3, 1904 1075
Eberlein to Chambers, Dec. 10, 1903 1577
Eberlein to Stone, Mar. 8, 1904 1493
Owen to Dumble, Mar. 25, 1903 1615
Owen to Dumble, July 16, 1905 1626
Owen to Dumble, July 20, 1905 1629
Owen to Kruttschnitt, Oct. 9, 1902 1630
Ryan's, special agent, second report, Mar. 22, 1904 1559
Ryan's report, Feb. 11, 1904 1555
Ryan's, special agent, report, Jan. 22, 1904 .. 1549
Stewart, Register, to Eberlein, Sep. 6, 1904 3855
Stewart, Register, to Eberlein, Sep. 14, 1904. 3856
Stewart to Comr. sending accepted enclosed List No. 89, Sep. 14, 1904 3857
Stewart to Eberlein, Aug. 10, 1904, ordering corrected list 3854
Visalia to Eberlein, Mar. 7, 1904 1510
Register to Comr. G. L. O. July 14, 1904 1574

Page

Lists:
No. 89 of lands selected by S. P. Co. Nov. 1903 3815
No. 89 revised 3939–3846
Owen's list of lands not oil and lands oil 1621–1628
Manuals from Sec'y files S. P. Co. 1902-1909 1340
Mineral application for Fuller's earth 3879–3885
Mineral locations, abstract 30–23 1652
Notices:
Of posting railroad selections 3860
Of Appeal (land contest) 3865
Of location of Mining claims 1652
Of publication railroad selection 3858
Owen's report as to mineral and nonmineral lands 1626
Owen's report as to mineral and nonmineral lands 1634–1638
Owen's report as to mineral and nonmineral lands 1643–1647
Patent United States to S. P. Co 19
Reports:
Cummings, special agent, July 13, 1900 1527
Comr. Fimple to R. & R. Feb. 11, 1904 1555
Comr. Macy to R. & R. Apr. 5, 1904 1568
Owen's report of lands mineral or nonmineral, plaintiff's Ex. 4-M 1626
Ryan, special agent, Jan. 22, 1904 1549
Ryan's, special agent, second report, Mar. 22, 1904 1559

Index to Judgment Roll and Appeal

	Page
Bill of Complaint	1
Answer to S. P. Co. and others	23
Answer of Equitable Trust Company	42
Orders of Court enlarging time	53–70
Opinion of Judge Bean, district judge	71
Final decree	81
Petition for appeal and order allowing same	3888
Assignment of errors on appeal	3890
Bond on appeal and order approving same	3896
Appellant's preacipe on appeal	3900
Order of Judge Bean approving condensed statement in part and directing what parts to transcribe by questions and answers	92
Stipulation of parties designating parts of record to print on appeal	94
Stipulation of parties approving condensed statement on appeal	100
Order of Judge Trippet approving condensed statement on appeal and directing original documents to be transmitted	102
Stipulation to set cause for argument on appeal for May 7-15, 1917	99

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation,
THE SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
HOMER S. KING, Trustee, JAMES K. WILSON, Trustee,
THE CENTRAL TRUST COMPANY OF NEW YORK, a corporation,
THE EQUITABLE TRUST COMPANY OF NEW YORK, a corporation,
THE KERN TRADING & OIL COMPANY, a corporation,
Defendants.

C. C.
No. 221. **[8A]**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA,

NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

The Southern Pacific Company, a corporation, The Southern Pacific Railroad Company, a corporation, Homer S. King, Trustee, James K. Wilson, Trustee, The Central Trust Company of New York, a corporation, The Equitable Trust Company of New York, a corporation, and the Kern Trading and Oil Company, a corporation,

IN EQUITY No. 221

Defendants.

To The Judges of the Circuit Court of The United States For the Ninth Circuit, Sitting Within and For the Southern District of California.

The United States of America, by The Attorney General, brings this bill of complaint against The Southern Pacific Company, a corporation, The Southern Pacific Railroad Company, a corporation, Homer S. King, Trustee, James K. Wilson, Trustee, The Central Trust Company of New York, a corporation, The Equitable Trust Company of New York, a cor-

poration, and The Kern Trading and Oil Company, a corporation, and thereupon **[9A]** complains and shows unto your Honors:

I.

The defendant, The Southern Pacific Company, is a corporation organized and existing under and by virtue of the laws of the State of Kentucky and a citizen and resident of said last named State.

The defendant, The Southern Pacific Railroad Company, is a corporation organized and existing under and by virtue of the laws of the State of California and a citizen and resident of said last named State.

The defendants, Homer S. King and James K. Wilson are residents and citizens of the city of San Francisco in the State of California and are now the surviving trustees under a certain trust deed executed by the defendant, The Southern Pacific Railroad Company, bearing date April 1, 1875, and purporting to secure the payment of $46,000,000 of the corporate bonds of said Southern Pacific Railroad Company, and which said trust deed is now claimed to be a lien upon the lands involved in this suit.

The defendant, The Central Trust Company of New York, is a corporation organized and existing under and by virtue of the laws of the State of New York, and is a resident and citizen of the said last named state; and said Central Trust Company of New York is sole trustee, under a certain deed of trust executed by the defendant, The Southern Pacific Railroad Company, and the defendant, The Southern

Pacific Company, to said Central Trust Company of New York, as Trustee, bearing date September 15, 1893, purporting to secure the payment of $58,000,000 of the corporate bonds issued and to be issued by said Southern Pacific Railroad Company, and is also sole trustee under a certain supplemental trust deed executed by said Southern **[10A]** Pacific Railroad Company, and said Southern Pacific Company to said Central Trust Company of New York, bearing date August 18, 1898, amending said trust deed bearing date September 15, 1893, in certain particulars, and among other things, in that it restricted the amount of bonds authorized to be issued thereunder to the sum of $30,000,000; and which said trust deeds, bearing date September 15, 1893, and August 18, 1898, respectively, are now claimed to constitute liens upon the lands involved in this suit.

The defendant, The Equitable Trust Company of New York, is a corporation organized and existing under and by virtue of the laws of the State of New York, and is a resident and citizen of said last named State. Said Equitable Trust Company is sole trustee under a certain deed of trust executed by the defendant, The Southern Pacific Railroad Company, to said Equitable Trust Company of New York as Trustee, bearing date January 3, 1905, purporting to secure the payment of $88,502,000 of refunding bonds issued and to be issued by said Southern Pacific Railroad Company, and which said deed of trust is now claimed to constitute a lien upon the lands involved in this suit.

The defendant, The Kern Trading and Oil Company, is a corporation, organized and existing under and by virtue of the laws of the State of California, and is a resident and citizen of said last named State.

II.

By Act of Congress approved July 27, 1866, The Congress of the United States made a grant of certain lands, privileges, and franchises, to aid in the construction of certain railroads mentioned in said Act of Congress. Sections 3, 4 and 18, of said Act of Congress are in words and figures as follows: **[11A]**

SEC. 3. **And be it further enacted,** That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a

plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: **Provided,** That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: **Provided further,** That the railroad company receiving the previous grant of land may assign their **[12A]** interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: **Provided further,** That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: **And provided further**, That the word "min-

eral," when it occurs in this act, shall not be held to include iron or coal: **And provided further,** That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

SEC. 4. **And be it further enacted,** That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the Commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued [13A] to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

SEC. 18. **And be it further enacted,** That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

III.

Thereafter and by a certain Joint Resolution of Congress, approved June 28, 1870, the Congress of the United States did provide as follows:

"BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED: That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said Company in the Department of Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the Company to the Secretary

of the Interior, he shall direct an examination of each such section by Commissioners to be appointed by the President, as provided in the Act, making a grant of said Company, **[14A]** approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the Commissioners to the Secretary of the Interior that such section of said railroad and telegraphic line has been constructed as required by law, it shall be the duty of said Secretary of the Interior to cause patents to be issued to said Company for the sections of land coterminous to each constructed Section reported on as aforesaid, to the extent and amount granted to said Company by the said Act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said Act."

IV.

On or about the 10th day of March, 1901, such proceedings were had and taken that the defendant, The Southern Pacific Railroad Company, then and thereafter assumed to be the successor of the original Southern Pacific Railroad Company mentioned in Section 18 of said Act of Congress approved July 27, 1866, and in said Joint Resolution of Congress approved June 28, 1870, and as such successor, has ever since said 10th day of March, 1901, assumed to exercise and enjoy all of the rights, privileges and benefits granted to said original Southern Pacific Railroad Company by said Act of Congress approved

July 27, 1866, and said Joint Resolution of Congress approved June 28, 1870.

V.

On or about August 31, 1904, the defendant, The Southern Pacific Railroad Company, in the manner required by law, made application for a patent from the United States of America for certain lands claimed to have inured to the benefit of said Southern Pacific Railroad Company under said Act of Congress approved July 27, 1866, and said Joint resolution approved June 28, 1870, as the successor of the original grantee as aforesaid. **[15A]**. And in that behalf said Southern Pacific Railroad Company did file and cause to be filed in Plaintiff's land Office, at Visalia in the State of California, the district in which all of the lands claimed as aforesaid, were and are situated, an application for said patent, together with a list of the lands claimed as aforesaid, supported by certain affidavits and other documents, in form as required by law and prescribed by the regulations of the plaintiff touching the procedure applicable thereto. Said list of lands claimed as aforesaid included all of the lands described in that certain patent hereinafter particularly mentioned and described, to-wit: All of the following tracts of lands situated in Township thirty south of base line and Range Twenty-three East of Mount Diablo Meridian, in the State of California, to-wit: All of Section fifteen, containing six hundred forty acres; Lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of Section Seventeen, containing four

hundred sixty-four acres and forty-nine hundredths of an acre; the lots numbered three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of Section nineteen, containing four hundred seventy-one acres and thirty-six hundredths of an acre; all of Section twenty-one, containing six hundred forty acres; all of Section 23, containing 640 acres, the lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve and the West half of Section twenty-five, containing six hundred ninety-three acres and thirty-two hundredths of an acres; all of Section 27, containing six hundred forty acres; all of Section Twenty-nine, containing six hundred forty acres; all of Section thirty-three, containing six hundred forty acres; all of Section thirty-five, containing six hundred forty acres. **[16A]**

VI.

All of the lands last herein described, and claimed by said defendant, The Southern Pacific Railroad Company, as aforesaid, were, and are, mineral lands and because thereof were, and are, by the terms of said Act of Congress approved July 27, 1866, and said Joint Resolution of Congress approved June 28, 1870, excepted and excluded from the operation of said grant, all of which facts were well known to said defendant, The Southern Pacific Railroad Company and its officers and agents at and prior to the time of the application for patent for said lands as aforesaid.

But designing and intending to cheat and defraud the plaintiff of all of said mineral lands, the said Southern Pacific Railroad Company did falsely,

fraudulently, dishonestly and unlawfully include said mineral lands in the list of lands claimed under the terms of said grant as aforesaid; and did falsely, fraudulently, dishonestly and unlawfully conceal from the plaintiff and the plaintiff's officers having authority in the premises, the mineral character of said lands; and in and by said application for patent did falsely, fraudulently, dishonestly and unlawfully represent that all of said lands, and particularly said lands last hereinbefore described, were non-mineral in character, and were of the character contemplated by the aforesaid grant; and for the purpose of deceiving, and defrauding the plaintiff, as aforesaid, said application for patent was supported by a certain affidavit signed and sworn to by one Charles W. Eberline, as the Acting Land Agent of the said Southern Pacific Railroad Company, (said Charles W. Eberline being then and there duly authorized to represent and act for said Southern Pacific Railroad Company in the premises), in and by which said affidavit it was falsely, fraudulently, dishonestly and unlawfully stated and sworn, among other things, **[17A]** that the said lands claimed as aforesaid including the lands hereinbefore particularly described, were not interdicted mineral lands and were of the character contemplated by the aforesaid grant, which said statement was false in this, that all of said lands contained rich and valuable deposits of minerals, and were, and are, mineral lands, and none of said lands were of the character contemplated by the aforesaid grant, but on the contrary, all of said lands were by

the terms of said grant expressly excluded and excepted from the operation thereof, all of which facts were then and there and theretofore well known to the said Southern Pacific Railroad Company and the said Charles W. Eberline; all of which said false statements and representations were made for the purpose of deceiving the plaintiff and the plaintiff's said officers having authority in the premises, and inducing the issuance of a patent for said lands fraudulently and unlawfully claimed by said defendant, the Southern Pacific Railroad Company, as aforesaid.

Plaintiff's said officials were deceived by the aforesaid false statements and representations and were induced to and did believe and rely upon said false and fraudulent statements and representations; and acting upon the belief that all of said statements and representations were true, induced by and on behalf of the said defendant, The Southern Pacific Railroad Company, as aforesaid, plaintiff's said officers were induced to and did cause to be issued the plaintiff's patent for said lands which said patent bears date March 1, 1909. **[18A]**

VII.

By the aforesaid false and fraudulent statements and representations, made by and on behalf of said defendant, The Southern Pacific Railroad Company, as aforesaid, PLAINTIFF'S said officials were induced to and did omit to make any examination, investigation or inquiry whereby the true facts in the premises might have been discovered; and omitted to in any manner adjudicate or determine

whether any of said lands were in fact mineral or non-mineral in character, or were in fact of the character contemplated by the aforesaid grant, but said patent was issued in reliance upon the aforesaid false, and fraudulent statements and representations made by and on behalf of said Southern Pacific Railroad Company, as aforesaid; and through inadvertence and mistake PLAINTIFF'S said officials did omit to insert in said patent, any clause or provision excepting or excluding from the operation thereof mineral lands in compliance with the provisions of said Act of Congress approved July 27, 1866, and said Joint Resolution of Congress approved June 28, 1870.

VIII.

The defendant, The Southern Pacific Company, is a holding corporation organized under and by virtue of the laws of the State of Kentucky, as aforesaid, for the purpose of controlling, and operating that certain syndicate of railroads known as the Southern Pacific System, including the railroad franchises and other property of the defendant, the Southern Pacific Railroad Company. By stock ownership and otherwise the defendant, The Southern Pacific Railroad Company now is, and ever since the year 1887, has been, owned, dominated and controlled by said defendant, The Southern Pacific Company.

Further designing, and intending to defraud the plaintiff **[19A]** and to conceal the aforesaid frauds practiced upon the plaintiff, as aforesaid, and for the further purpose of securing to said defendant,

The Southern Pacific Railroad Company, and said defendant, The Southern Pacific Company, the benefit of certain mineral lands fraudulently and unlawfully claimed by said defendant, The Southern Pacific Railroad Company, as aforesaid, including those certain lands hereinbefore particularly described, the defendant, The Kern Trading and Oil Company was organized under and by virtue of the laws of the State of California as a mere dummy corporation, for the benefit and use of said defendant, The Southern Pacific Railroad Company, and said defendant, The Southern Pacific Company. And in that behalf some secret agreement, in the nature of a mineral lease or otherwise (the exact particulars concerning which is to the PLAINTIFF unknown) has been entered into by or in the name of said defendant, The Southern Pacific Railroad Company, and said defendant, The Kern Trading and Oil Company, by virtue of which some pretended right, title or interest now is or will be asserted by and in the name of said defendant, The Kern Trading and Oil Company, in and to said lands hereinbefore particularly described. The PLAINTIFF leaves said defendants to set forth the nature and extent of said pretended right, title and interest, but in that behalf states that said defendant, The Kern Trading and Oil Company, has no right, title, interest, claim or lien whatsoever in, to or upon any of said lands, and particularly as against the rights, equities and remedies of the PLAINTIFF in the premises. **[20A]**

IX.

The aforesaid lands hereinbefore particularly described aggregate approximately sixty-one hundred nine and seventeen hundredths of an acre, and are of a value exceeding ten millions of dollars. None of said lands have ever been reduced to possession or in any manner improved. But the PLAINTIFF is informed and believes, and therefore avers, that the defendants and each of them and particularly said defendant, The Southern Pacific Company, said defendant, The Southern Pacific Railroad Company, and said defendant, The Kern Trading and Oil Company, threaten to, and will, unless restrained therefrom, enter upon and take possession of said lands, and extract minerals therefrom, and particularly the deposits of oil and petroleum therein contained, and will otherwise commit waste and trespass thereupon, to the irreparable injury of the PLAINTIFF in the premises.

X.

The defendants and each of them assert some right, title, interest or lien into or upon said lands hereinbefore particularly described or some part thereof under and by virtue of said patent issued, as aforesaid, in addition to the several claims herein specifically set forth. The PLAINTIFF is not informed as to the exact nature and extent of any of said claims asserted, as aforesaid, and therefore leaves each of said defendants to set forth and disclose their respective claims as they may be advised. But, nevertheless, PLAINTIFF avers that whatever

right, title, interest or lien the defendants or each of them assert or claim in, to or upon said lands, or any part thereof, was acquired with full knowledge of the said Act of Congress approved July 27, 1866, and of said Joint Resolution of Congress approved June 28, 1870, and with full knowledge and notice of the fraud so as aforesaid perpetrated upon the PLAINTIFF and that such alleged rights, titles, interests or liens **[21A]** are, and each of them is without right and void and should be so in equity decreed in favor of the PLAINTIFF and that the same should be **voided** by decree of this Honorable Court.

In consideration whereof, and for as much as the plaintiff is without full or adequate remedy in the premises save in a court of equity, and to the end that the defendants, The Southern Pacific Company, The Southern Pacific Railroad Company, Homer S. King, James K. Wilson, The Central Trust Company of New York, The Equitable Trust Company of New York, and the Kern Trading and Oil Company, may make full, true and direct answer to all and singular the matters and things hereinbefore set out, as fully as if each of them had been particularly interrogated thereunto, but not under oath, an answer under oath being hereby expressly waived; and to the end that the said patent issued, as aforesaid, may be declared null and void, and be set aside, revoked and held for naught, and be surrendered by the defendants, under the court's command, for cancellation; and that all and singular the said described lands may

be adjudged and decreed to be the perfect property of the PLAINTIFF free and clear of all claims of the defendants or either or any of them; and that the defendants and each of them, during the progress of this cause, and thereafter finally and perpetually may be enjoined from setting up any claim to the said lands or any part thereof, and from creating any cloud upon the plaintiff's title thereto or any part thereof, and from digging or mining or asporting any minerals therefrom, or otherwise committing waste or damage thereto; and that the PLAINTIFF may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please your Honors to grant unto the PLAINTIFF a writ of subpoena, to be directed to the said The Southern Pacific Company, The Southern Pacific Railroad Company, Homer S. King, James K. Wilson, The Central Trust Company of New York, **[22A]** The Equitable Trust Company of New York, and the Kern Trading and Oil Company, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them or either or any of them in the premises as shall seem meet and agreeable to equity.

GEORGE W. WICKERSHAM,
Attorney General of the United States.

A. I. McCORMICK,
United States Attorney for the Southern District of California.

WILLIS N. MILLS,
Spcl Asst. to the Atty Gen'l. Of Counsel.

[23A]

EXHIBIT A.

The United States of America

To all to whom these presents shall come, Greeting: Whereas, by the Act of Congress approved July 27, 1866, and Joint Resolution of June 28, 1870, "to aid in the construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast," and to secure to the Government the use of the same for Postal, Military and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of said State, to construct a Railroad and Telegraph Line under certain conditions and stipulation expressed in said Act, from the City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said Company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate section per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles

on each side of said road, not sold, reserved, granted, or otherwise appropriated by the United States, and free from pre-emption or other claims, or right, at the time the line of said road is definitely fixed; and

Whereas, it is further provided by said Act that "whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-emption, or otherwise disposed of, other lands shall be selected by said Company in lieu thereof under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections and not included in the reserved numbers," and **[24A]**

Whereas, it has been shown by evidence filed in the Department of the Interior that the entire line of the Southern Pacific (main line) Railroad and Telegraph from San Jose to The Needles on the Colorado River, except that portion between Tres Pinos and Alcalde, which was declared forfeited by the Act of September 29, 1890, has been constructed and fully completed and equipped in the manner prescribed by said Act of July 27, 1866, and accepted; and

Whereas, it is shown by certain papers filed in the office of the Commissioner of the General Land Office by the duly authorized Attorney of the Southern Pacific Railroad Company with his letter of April 30, 1902, that said Southern Pacific Railroad Company is the successor by consolidation of the South-

ern Pacific Railroad Company of California; and

Whereas, the following tracts have been selected under the Acts aforesaid by the duly authorized land agent of the said Southern Pacific Railroad Company of California, or its successor, as shown by his original list approved by the local officers and now on file in the General Land Office; and

Whereas, the said tracts of land lie coterminous to the constructed line of said road, and are particularly described as follows, to-wit:

South of base line and **East** of **Mount Diablo Meridian, State** of **California, Township Thirty, Range Twenty-three,** All of section fifteen, containing six hundred and forty acres. The lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of section seventeen, containing four hundred and sixty-four acres and forty-nine hundredths of an acre. The lots numbered three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen, of section nineteen, containing four hundred and seventy-one acres and thirty-six hundredths of an acre. All of **[25A]** section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. The lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, and the West half of section twenty-five, containing six hundred and ninety-three acres, and thirty-two hundredths of an acre. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six

hundred and forty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

The said tracts of land as described in the foregoing make the aggregate area of six thousand one hundred and nine acres and seventeen hundredths of an acre, (6,109.17).

Now Know Ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress, **Have Given and Granted** and by these presents **Do Give and Grant,** unto the said **Southern Pacific Railroad Company,** successor in interest to the Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing.

To Have and to Hold, the same together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging unto the said **Southern Pacific Railroad Company,** and to its successors and assigns forever.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

[26A]

Given under my hand at the City of Washington this twelfth day of December in the year of our Lord, one thousand nine hundred and four and of the Unit-

ed States **States** the one hundred and twenty-ninth.

[Seal] T. ROOSEVELT,

By the President:

F. M. McKEAN,
Secretary.

C. H. BRUSH,
Recorder of the General Land Office.

[Endorsed]: Original No. 221. In the Circuit Court of the United States for the Sou. Dist. of California, Northern Division United States of America, Ptff., vs. The Southern Pacific Company et al., Defts., Bill of Complaint (in Equity). Geo. W. Wickersham, Attorney General; A. I. McCormick, U. S. Attorney, Solicitors for Plaintiff. Filed Dec. 10, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy.

[27A]

Case No. 221.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

IN EQUITY.

Joint and Several Answer of all Defendants other than the Equitable Trust Company of New York.

The defendants, Southern Pacific Company, Southern Pacific Railroad Company, Homer S. King,

James K. Wilson, Trustees, Central Trust Company of New York, and Kern Trading and Oil Company, jointly and severally, now and at all times saving unto themselves all and all manner of benefit and advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill of Complaint (hereinafter referred to as "the Bill") contained, make the following Joint and Several Answer thereto, or to so much and such parts thereof as they are advised it is material or necessary for them or any of them to make answer to.

I.

It is true, as alleged in the Bill, that the defendant Southern Pacific Company, is a corporation, organized and existing under and by virtue of the laws of the State of Kentucky, and a citizen and resident of that State. [28A]

The defendant Southern Pacific Railroad Company is a corporation organized and existing under the laws of the State of California and Territories of Arizona and New Mexico, and a citizen and resident of the State of California; but except as aforesaid it is not true, as stated in the Bill, that the said defendant is a corporation organized and existing under the laws of the State of California.

The defendants Homer S. King and James K. Wilson are citizens and residents of the State of California, and are the surviving Trustees under a deed of trust or mortgage, executed by the Southern Pacific Railroad Company, bearing date April 1,

1875, purporting to and which did secure the payment of $46,000,000 of the corporate bonds of said Southern Pacific Railroad Company; which trust deed or mortgage is claimed to be and is a lien upon the lands involved in this suit. But it is not true, as stated in the Bill, that the Southern Pacific Railroad Company which executed the said trust mortgage is the Southern Pacific Railroad Company defendant in this suit.

The defendant Central Trust Company of New York is a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen and resident of that State. The said Central Trust Company is sole Trustee under a trust deed or mortgage executed by the hereinbefore mentioned Southern Pacific Railroad Company and the defendant Southern Pacific Company unto it (the said Central Trust Company of New York) as Trustee, bearing date September 15th, 1893, purporting to and which did secure the payment of $58,000,000 of the corporate bonds issued and to be issued by the said Southern Pacific Railroad Company; and the said Central Trust Company of New York is also sole Trustee under a supplemental trust deed or mortgage executed by the said Southern Pacific Railroad Company and the Southern Pacific Company unto it (the said Central Trust Company of New York), bearing date August 18th, 1898, **[29A]** amending the said former trust deed or mortgage of September 15th, 1893, so as to restrict the amount of bonds authorized to be issued thereunder to $30,000,000;

which trust deeds or mortgages are claimed to, and do, constitute liens upon the lands involved in this suit. But it is not true, as stated in the Bill, that the Southern Pacific Railroad Company which executed the said trust deeds or mortgages, or either thereof, is the Southern Pacific Railroad Company defendant in this suit.

The defendant Equitable Trust Company of New York is a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen and resident of that State. The said defendant is sole Trustee under a deed of trust or mortgage executed by the defendants Southern Pacific Railroad Company and Southern Pacific Company to it (the said Equitable Trust Company of New York) as Trustee, bearing date January 3rd, 1905, purporting to and which did secure the payment of $88,502,000 of refunding bonds issued and to be issued by the defendant Southern Pacific Railroad Company; but the said trust deed or mortgage is not in fact, nor is it claimed to constitute, nor is it held to be, a lien upon the lands involved in this suit.

The defendant Kern Trading & Oil Company is a corporation organized and existing under and by virtue of the laws of the State of California, and a citizen and resident of that State.

II.

The Act of Congress approved July 27th, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the

States of Missouri and Arkansas to the Pacific Coast," granted unto the Southern Pacific Railroad Company, referred to and named in Section 18 of the said Act as, and which was, a Railroad Company incorporated under the laws of the State of California, a grant of franchises, privileges, **[30A]** and lands including the lands involved in this suit; which Act of Congress, as published in Volume 14, United States Statutes at Large, pages 292 and following, is hereby made a part of this Answer, by reference.

These defendants ask that, by the order of this Court, all of subdivision "II" of the Bill, except the first paragraph thereof, be expunged therefrom as unnecessary haec verba recitation.

III.

By Joint Resolution of Congress, approved June 28th, 1870, entitled "Joint Resolution concerning the Southern Pacific Railroad of California," the said Southern Pacific Railroad Company, of California, was authorized to construct its railroad, provided for by the said Act of July 27th, 1866, as nearly as may be on the route indicated on the map filed by said Company in the Department of the Interior on January 3rd, 1867; which Joint Resolution, as published in Volume 16, United States Statutes at Large, pages 382 and following, is hereby made a part of this Answer, by reference.

These defendants ask that, by the order of this Court, all of subdivision "III" of the Bill except the

first paragraph thereof, be expunged therefrom as unnecessary haec verba recitation.

IV.

On or about March 10th, 1902, (not on or about March 10th, 1901, as erroneously stated in the Bill) such proceedings were duly had and taken as that the defendant Southern Pacific Railroad Company became the successor of the Southern Pacific Railroad Company mentioned in and to which the lands involved in this suit were granted by the said Act of July 27th, 1866, and Joint Resolution of June 28th, 1870, in ownership of all rights, privileges, franchises, lands and other property of the said **[31A]** Southern Pacific Railroad Company, including ownership of the lands involved in this suit subject to the trust deeds or mortgages hereinbefore set forth, other than the said trust deed or mortgage to the Equitable Trust Company of New York.

V.

During the year 1904, but prior to August 31st, 1904, the defendant Southern Pacific Railroad Company, as successor of the Southern Pacific Railroad Company named in Section 18 of the said Act of Congress of July 27th, 1866, made application in the manner and form required by law and the rules and regulations prescribed by the Secretary of the Interior, for a patent from the United States for the lands described in subdivision "V" of the Bill, under and in pursuance of the provisions of the said

Act of July 27th, 1866, and Joint Resolution of June 28th, 1870.

VI.

These defendants say, upon information which they believe to be true, that the true facts and particulars respecting the matters and things set forth in subdivision "VI" of the Bill, are as follows:

No land described in subdivision "V" of the Bill is, or at any time was, known to be, discovered to be, nor did it nor does it appear to be, mineral land or land containing mineral deposits in appreciable or paying quantities; and they deny that any of said land was, or is, excepted or excluded as mineral land, or otherwise, from the grant of lands made unto the said Southern Pacific Railroad Company by the Act of July 27th, 1866, and Joint Resolution of June 28th, 1870.

These defendants are informed and believe that the list of land referred to in subdivision "VI" of the Bill, was lawfully, truthfully and sincerely made and filed, for the purposes therein set forth and none other, in all respects conforming to the rules **[32A]** and regulations of the Interior Department governing such matters; and these defendants are informed and believe that the affidavit referred to in subdivision "VI" of the Bill as having been made by Charles W. Eberlein in support of the defendant Southern Pacific Railroad Company's said application for patent for the lands involved in this suit, was and is true and correct in all particulars, and that officials of the United States were not and

could not have been deceived or misled by any statements made in that affidavit.

These defendants further say, on information which they believe to be true, that all allegations made in subdivision "VI" of the Bill, in anywise contrary to or contradictory of the foregoing allegations of this subdivision "VI" of this Answer, are untrue and scandalous.

VII.

The true facts and particulars as to the matters and things set forth in subdivision "VII" of the Bill, are as follows:

During the month of February, 1900, the lands described in subdivision "V" of the Bill, were by the Commissioner of the General Land Office suspended from non-mineral entry, upon representations made to him that the said lands contained mineral; thereafter the said Commissioner investigated the character of said land for minerals by and through Special Agents of his Department, appointed by him for the purpose of examining and who these defendants are informed and believe did examine the said land for the purpose of ascertaining and reporting its true character for minerals contained, and who duly reported to the Commissioner that they had carefully examined the said land and found no indication that minerals of any kind existed in any of said land; whereupon, in February, 1904, the said Commissioner adopted and approved the said Special Agents' report, and declared all of the said land free

from suspension and subject **[33A]** to entry as agricultural land.

By order made and entered on December 10th, 1903, about one year prior to issuance of the patent referred to in subdivision "VII" of the Bill, the Secretary of Interior duly and properly adjudged that no clause excepting or reserving mineral land could be lawfully inserted in patents for railroad land-grant lands, and directed that thereafter no such clause should be inserted in any such patents; and these defendants are informed and believe that the uniform practice of the United States officers, continuously since the order of December 10th, 1903, was made, has been to issue all railroad land-grant patents free of any clause or provision excepting, excluding or reserving, mineral lands. The said judgment and order of December 10th, 1903, as published in Vol. XXXII, Decisions of the Department of the Interior, pages 342 and following, is made part of this Answer by reference.

These defendants are advised and believe that the said patent was duly and lawfully issued, in proper form, without inadvertence, or mistake; and upon information and belief they say that all allegations in subdivision "VII" of the Bill, contrary to or contradictory of the foregoing statements of this subdivision "VII" of this Answer, are erroneous and untrue.

VIII.

The defendant Southern Pacific Railroad Company is sole owner, under and in virtue of the United

States patent a copy of which is attached to the Bill, and under and in virtue of the Acts of Congress and Joint Resolution therein referred to, of all lands described in the said attached copy, subject to the lien of the trust deeds or mortgages hereinbefore set forth, other than the said trust deed or mortgage to the Equitable Trust Company of New York; and the United States has no right, title or interest whatsoever, in or to the said lands, or any part thereof. **[34A]**

The defendant Southern Pacific Company does not, nor does the defendant Kern Trading & Oil Company, own or hold any right, title or interest in or to any of the said lands; and all material allegations of subdivision "VIII" of the Bill respecting or relating to the said two defendants, are untrue.

IX.

The defendant Southern Pacific Railroad Company is the owner (subject to the liens of the aforesaid mortgages other than the Equitable Trust Company mortgage), in possession and entitled to the possession of, and entitled to extract all minerals and mineral deposits (if any there be therein or thereon) from, the lands described in subdivision "V" of the Bill; and these defendants deny that the possession of said lands, or the extraction of mineral or mineral deposits (if any there be therein or thereon) therefrom, by any or all of the defendants, would be trespass or waste as against plaintiff, or would in anywise injure or concern the plaintiff.

X.

These defendants, jointly and severally, deny all and all manner of matter, cause or thing in the said Bill contained, material or necessary for them or any of them to make answer to and not herein well and sufficiently answered, traversed, avoided or denied, is true to their knowledge or belief.

All of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Court may direct; and they pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

GUY V. SHOUP and D. V. COWDEN,
Attorneys for the said Defendants.

WM. SINGER, JR.,
JOLINE, LARKIN & RATHBONE,
Counsel for the said Defendants.

[35A]

State of California,
City and County of San Francisco,—ss.

G. L. King, being duly sworn, deposes and says: That he is Secretary of the Southern Pacific Railroad Company, the principal defendant to the foregoing Answer; that he has read the foregoing Answer and knows the contents thereof; that the allegations therein contained, so far as they relate to his own acts and deeds are true, and so far as they relate to the acts and deeds of others he believes them to be true; and that he has been informed as to the matters and things alleged and denied in the foregoing Answer which are not within his knowledge, and he

believes all such allegations and denials to be true.

G. S. KING.

Subscribed and sworn to before me on April 5th, 1911. E. B. RYAN,

Notary Public in and for the City and County of San

[Seal] Francisco, State of California.

[36A]

State of California,

City and County of San Francisco,—ss.

Fred Brauns, being duly sworn, deposes and says: That he is Chief Clerk in the office of Wm. Singer, Jr., Room 842 Flood Building, San Francisco, California, General Land Attorney for the defendant Southern Pacific Railroad Company, and Counsel for all defendants joined as such in the foregoing Answer; that he (affiant) this day deposited in the United States mail at San Francisco, California, a full and correct copy of the foregoing Answer, enclosed by a sealed envelope, postage prepaid, addressed as follows: "Mr. A. I. McCormick, United States Attorney, Los Angeles, California."

FRED BRAUNS.

Subscribed and sworn to before me on April 5th, 1911. E. B. RYAN,

Notary Public in and for the City and County of San

[Seal] Francisco, State of California.

[Endorsed]: No. 221. U. S. Circuit Court, Southern District of California, Northern Division, United States of America, vs. Southern Pacific Company, et al. Joint and Several Answer of all Defendants other than the Equitable Trust Company. Guy V.

Shoup and D. V. Cowden, Attorney for Defendants, Room 842, Flood Building, San Francisco. Filed April 6, 1911, Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[37A]**

At a stated term, to wit: The January Term, A. D. 1912, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the court room thereof, in the city of Los Angeles, on Thursday, the twenty-eighth day of March, in the year of our Lord One Thousand Nine Hundred and Twelve:

Present: The Honorable Olin Wellborn, District Judge.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation, et al.,

Defendants.

C. C. No. 221, Northern Division.

Amended per minute order of April 10th, C. E. Scott, Deputy Clerk.

It appearing that in the opinion of the Honorable Olin Wellborn, Judge of this court, it is improper for him to sit on the trial of this cause, now in the application of A. I. McCormick, Esq., U. S. Attorney, the Court directs the United States Attorney for this District to prepare an order accordingly for entry herein and subsequent certification to the senior Circuit Judge for the Ninth Circuit, present in

the Circuit, pursuant to said Sec. 20 of the U. S. Judicial Code.

O. K. C. E. S. 3-28-12 p l **[38A]**

At a stated term, to wit: The January Term, A. D. 1912, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the court room thereof, in the city of Los Angeles, on Tuesday, the 9th day of April, in the year of our Lord One Thousand Nine Hundred and Twelve:

Present: The Honorable Olin Wellborn, District Judge.

THE UNITED STATES OF AMERICA,

Complainants.

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation, et al.,

Defendants.

C. C. No. 221, Northern Division.

It appearing to the court that the judge thereof, through one of his relatives, is so related to the parties defendant in the above entitled suit as to render it improper, in his opinion, for him to sit on the trial thereof; and A. I. McCormick, Esq., U. S. Attorney for the Southern District of California, of counsel for complainants, having, on the 28th day of March, 1912, by an order of this court, entered on that day, been directed to prepare an order accordingly for entry herein and subsequent certification to the senior Circuit Judge for the Ninth Circuit,

present in the Circuit, pursuant to Section 20 of the United States Judicial Code;

Now, therefore, on the application of said A. I. McCormick, Esq., U. S. Attorney for this District, and of counsel for complainants, the foregoing fact is entered on the records of this court, and it is ordered that an authenticated copy hereof be forthwith certified to the senior Circuit Judge for this Circuit, present in the Circuit. **[39A]**

O. K. C. E. S. 4-9-12. p. l.

At a Special Term of the District Court of the United States, for the Southern District of California, Northern Division, held in the "Circuit Court" Room, in the Federal Building, in the City of Los Angeles, on Monday, the eighteenth day of January, in the year of our Lord One Thousand Nine Hundred and Fifteen.

Present: The Honorable Robert S. Bean, District Judge.

THE UNITED STATES OF AMERICA,
Complainants.

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

C. C. No. 221, Northern Division.

Good cause appearing therefor, it is ordered that the following order, heretofore made and filed herein, be spread in full upon the minutes of this Court, to wit:

"IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

"United States of America, Plaintiff, vs. Southern Pacific Company, et al., Defendants. No. 221 in Equity.

"In pursuance of stipulation of the parties, and order made by Honorable R. S. Bean, United States District Judge, heretofore filed herein, on the 5th day of October, 1914, fixing January 18, 1915, at Los Angeles, California, in said District, as the time and place for the hearing of final argument in, and the determination of, the above entitled matter, it appearing to me that the nature of said business requires;

IT IS HEREBY ORDERED that a special term of this Court be begun and held at Los Angeles, California, on January 18, 1915.

"Done at Fresno, California, this 18th day of November, 1914.

"Benjamin F. Bledsoe, District Judge." **[40A]**

[Endorsed]: "C. C. No. 221. United States District Court, Southern District of California, Northern Division. United States of America vs. Southern Pacific Company, et al., Order for Special Term. Filed November 18, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk." **[41A]**

At a stated term, to wit: The Special Term of the District Court of the United States, for the Southern District of California, Northern Di-

vision, held in the "Circuit Court" Room thereof, in the City of Los Angeles, on Monday, the Eighteenth day of January, in the year of our Lord, One Thousand Nine Hundred and Fifteen.

Present: The Honorable Robert S. Bean, District Judge.

THE UNITED STATES OF AMERICA,
Complainants.

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

C. C. No. 221, Northern Division.

Good cause appearing therefor, it is ordered that the following stipulation and order herein be spread in full upon the minutes of this court, to wit:

"IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

"United States of America, Complainant, vs. The Southern Pacific Company, et al., Defendants. In Equity No. 221.

"STIPULATION.

"WHEREAS, the Honorable Olin Wellborn, United States District Judge for the Southern District of California, wherein said cause is pending, on to wit: April 9th, 1912, caused to be entered in the records of said Court his opinion that he was disqualified to try said above entitled cause, and thereupon ordered that an authenticated copy of the said

opinion be certified to the Senior Circuit Judge of the 9th Circuit, and

"WHEREAS, the Clerk of said Court, did, on April 10, 1912, forward to the said Senior Circuit Judge a certified copy of said order of April 9th, 1912, and **[42A]**

"WHEREAS, the said Senior Circuit Judge for said 9th Circuit did thereupon appoint and designate Honorable Robert S. Bean, United States District Judge for the District of Oregon in said 9th Circuit, to try said cause for the reasons assigned in said opinion and order of the Honorable Olin Wellborn, and

"WHEREAS, on December 12, 1913, all of the testimony and proofs on behalf of both the plaintiff and the defendants in the above entitled cause having been put in and fully and finally completed, ready for submission by oral argument to the Court, and

"WHEREAS, on, to wit: November 5th, 1913, said above entitled cause was placed on the term trial calendar for the November Term of 1913, and

"WHEREAS, it is the desire of both the plaintiff and the defendants in said cause to argue said cause at the earliest available date, and

"WHEREAS, the said Honorable Robert S. Bean, United States District Judge in charge of the conduct of and the final determination of said cause has indicated that he will hear final arguments therein at Los Angeles, California, in one of the United States Court Rooms of the Federal Building of that city, on, to wit: Monday, the 18th day

of January, 1915, and such following days as are necessary to complete said arguments, and

"WHEREAS, the time so fixed by the Court for the arguments of counsel is satisfactory and convenient to all the parties to said cause, and it is the desire of counsel both for the plaintiff and the defendants to have said cause heard at said time and place;

"It is hereby stipulated by and between each and all of the parties to said suit, and their solicitors, that said cause be heard and determined at the time and place so fixed by the Court as aforesaid, to wit: at Los Angeles, California, on the 18th day of January, 1915. [**43A**]

"Dated this 1st day of October, 1914.

"T. W. Gregory, Attorney General of the United States.

"W. N. Mills, Special Assistant to the Attorney General.

"Solicitors for Plaintiff.

"Charles R. Lewers, Guy V. Shoup,

"Solicitors for all Defendants other than the Equitable Trust Company of New York.

"J. W. McKinley,

"Solicitor for defendant Equitable Trust Company of New York.

"It is so ordered:

"R. S. BEAN,

"United States District Judge."

[Endorsed]: "Equity No. 221. In the District Court of the United States for the Southern District

of California, Northern Division, United States of America, Complainant, vs. The Southern Pacific Company, et al., Defendants. Stipulation and order. Filed Oct. 5, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk." [**44A**]

Case No. 221.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff.

vs.

SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

IN EQUITY.

ANSWER OF DEFENDANT, THE EQUITABLE TRUST COMPANY OF NEW YORK.

The defendant, The Equitable Trust Company of New York, now, and at all times, saving unto itself all and all manner of benefit and advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill of Complaint (hereinafter referred to as "the Bill") contained, makes the following answer thereto, or to so much and such parts thereof as it is advised it is material or necessary for it to make answer to.

I.

It is true, as alleged in the Bill, that the defendant Southern Pacific Company is a corporation, organized and existing under and by virtue of the laws of the State of Kentucky, and a citizen and resident of that State. **[45A]**

The defendant Southern Pacific Railroad Company is a corporation organized and existing under the laws of the State of California and Territories of Arizona and New Mexico, and a citizen and resident of the State of California; but except as aforesaid it is not true, as stated in the Bill, that the said defendant is a corporation organized and existing under the laws of the State of California.

The defendants Homer S. King and James K. Wilson are citizens and residents of the State of California, and are the surviving Trustees under a deed of trust or mortgage, executed by the Southern Pacific Railroad Company, bearing date April 1st, 1875, purporting to and which did secure the payment of $46,000,000 of the corporate bonds of said Southern Pacific Railroad Company; which trust deed or mortgage is claimed to be and is a lien upon the lands involved in this suit. But it is not true, as stated in the Bill, that the Southern Pacific Railroad Company which executed the said trust mortgage is the Southern Pacific Railroad Company defendant in this suit.

The defendant Central Trust Company of New York is a corporation organized and existing under and by virtue of the laws of the State of New York,

and a citizen and resident of that State. The said Central Trust Company is sole Trustee under a trust deed or mortgage executed by the hereinbefore mentioned Southern Pacific Railroad Company and the defendant Southern Pacific Company unto it (the said Central Trust Company of New York) as Trustee, bearing date September 15th, 1893, purporting to and which did secure the payment of $58,000,000 of the corporate bonds issued and to be issued by the said Southern Pacific Railroad Company; and the said Central Trust Company of New York is also sole Trustee under a supplemental trust deed or mortgage executed by the said Southern Pacific Railroad Company and Southern Pacific Company unto it (the said Central **[46A]** Trust Company of New York), bearing date August 18th, 1898, amending the said former trust deed or mortgage of September 15th, 1893, so as to restrict the amount of bonds authorized to be issued thereunder to $30,000,000; which trust deeds or mortgages are claimed to, and do, constitute liens upon the lands involved in this suit. But it is not true, as stated in the Bill, that the Southern Pacific Railroad Company which executed the said trust deeds or mortgages, or either thereof, is the Southern Pacific Railroad Company defendant in this suit.

The defendant The Equitable Trust Company of New York is a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen and resident of that State. The said defendant is sole Trustee under a deed of trust

or mortgage executed by the defendants Southern Pacific Railroad Company and Southern Pacific Company to it (the said The Equitable Trust Company of New York) as Trustee, bearing date January 3rd, 1905, purporting to and which did secure the payment of $88,502,000 of refunding bonds issued and to be issued by the defendant Southern Pacific Railroad Company; which trust deed or mortgage is claimed by the other defendants to this suit not to constitute a lien upon the lands involved in this suit; but this defendant alleges that it does not know and cannot set forth as to its belief or otherwise as to whether said trust deed or mortgage does or does not constitute a lien upon said lands and this defendant submits to this court for its determination as a matter of fact and law the question whether such trust deed or mortgage does or does not constitute a lien upon said lands.

The defendant Kern Trading & Oil Company is a corporation organized and existing under and by virtue of the laws of the State of California, and a citizen and resident of that State. **[47A]**

II.

The Act of Congress approved July 27th, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," granted unto the Southern Pacific Railroad Company, referred to and named in Section 18 of the said Act as, and which was, a Railroad Company incorporated under the laws of the State of Califor-

nia, a grant of franchises, privileges and lands, including the lands involved in this suit; which Act of Congress, as published in Volume 14, United States Statutes at Large, pages 292 and following, is hereby made a part of this Answer, by reference.

This defendant asks that, by the order of this Court, all of subdivision "II" of the Bill, except the first paragraph thereof, be expunged therefrom as unnecessary haec verba recitation.

III.

By Joint Resolution of Congress, approved June 28th, 1870, entitled "Joint Resolution concerning the Southern Pacific Railroad of California," the said Southern Pacific Railroad, of California, was authorized to construct its railroad, provided for by the said Act of July 27th, 1866, as nearly as may be on the route indicated on the map filed by said Company in the Department of the Interior on January 3rd, 1867; which Joint Resolution, as published in Volume 16, United States Statutes at Large, pages 382 and following, is hereby made a part of this Answer, by reference.

This defendant asks that, by the order of this Court, all of subdivision "III" of the Bill except the first paragraph thereof, be expunged therefrom as unnecessary haec verba recitation. **[48A]**

IV.

On or about March 10th, 1902, (not on or about March 10th, 1901, as erroneously stated in the Bill), such proceedings were duly had and taken as that the defendant Southern Pacific Railroad Company

became the successor of the Southern Pacific Railroad Company mentioned in and to which the lands involved in this suit were granted by the said Act of July 27th, 1866, and Joint Resolution of June 28th, 1870, in ownership of all rights, privileges, franchises, lands and other property of the said Southern Pacific Railroad Company, including ownership of the lands involved in this suit subject to the trust deeds or mortgages hereinbefore set forth.

V.

During the year 1904, but prior to August 31st, 1904, the defendant Southern Pacific Railroad Company, as successor of the Southern Pacific Railroad Company named in Section 18 of the said Act of Congress of July 27th, 1866, made application in the manner and form required by law and the rules and regulations prescribed by the Secretary of the Interior, for a patent from the United States for the lands described in subdivision "V" of the Bill, under and in pursuance of the provisions of the said Act of July 27th, 1866, and Joint Resolution of June 28th, 1870.

VI.

This defendant says upon information which it believes to be true, that the true facts and particulars respecting the matters and things set forth in subdivision "VI" of the Bill, are as follows:

No land described in subdivision "V" of the Bill is, or at any time was, known to be, discovered to be, nor did it nor does it appear to be, mineral land or land containing mineral deposits in appreciable

or paying quantities; and it denies that any of **[49A]** said land was, or is, excepted or excluded as mineral lands, or otherwise, from the grant of lands made unto the said Southern Pacific Railroad Company by the Act of July 27th, 1866, and Joint Resolution of June 28th, 1870.

This defendant is informed and believes that the list of land referred to in subdivision "VI" of the Bill, was lawfully, truthfully and sincerely made and filed, for the purposes therein set forth and none other, in all respects conforming to the rules and regulations of the Interior Department governing such matters; and this defendant is informed and believes that the affidavit referred to in subdivision "VI" of the Bill as having been made by Charles W. Eberlein in support of the defendant Southern Pacific Railroad Company's said application for patent for the lands involved in this suit, was and is true and correct in all particulars, and that officials of the United States were not and could not have been deceived or misled by any statements made in that affidavit.

This defendant further says, on information which it believes to be true, that all allegations made in subdivision "VI" of the Bill, in anywise contrary to or contradictory of the foregoing allegations of this subdivision "VI" of this Answer, are untrue and scandalous.

VII.

The true facts and particulars as to the matters

and things set forth in subdivision "VII" of the Bill, are as follows:

During the month of February, 1900, the lands described in subdivision "V" of the Bill, were by the Commissioner of the General Land Office suspended from non-mineral entry, upon representations made to him that the said lands contained mineral; thereafter the said Commissioner investigated the character **[50A]** of said land for minerals by and through Special Agents of his Department, appointed by him for the purpose of examining and who this defendant is informed and believes did examine the said land for the purpose of ascertaining and reporting its true character for minerals contained, and who duly reported to the Commissioner that they had carefully examined the said land and found no indication that minerals of any kind existed in any of said land; whereupon, in February, 1904, the said Commissioner adopted and approved the said Special Agent's report, and declared all of the said land free from suspension and subject to entry as agricultural land.

By order made and entered on December 10th, 1903, about one year prior to issuance of the patent referred to in subdivision "VII" of the Bill, the Secretary of the Interior duly and properly adjudged that no clause excepting or reserving mineral land could be lawfully inserted in patents for railroad land-grant lands, and directed that thereafter no such clause should be inserted in any such patents; and this defendant is informed and believes that the

uniform practice of the United States officers, continuously since the order of December 10th, 1903, was made, has been to issue all railroad land-grant patents free of any clause or provision excepting, excluding or reserving, mineral lands. The said judgment and order of December 10th, 1903, as published in Vol. XXXII, Decisions of the Department of the Interior, pages 342 and following, is made part of this Answer by reference.

This defendant is advised and believes that the said patent was duly and lawfully issued, in proper form, without inadvertence, or mistake; and upon information and belief it says that **[51A]** all allegations in subdivision "VII" of the Bill, contrary to or contradictory of the foregoing statements of this subdivision "VII" of this Answer, are erroneous and untrue.

VIII.

The defendant Southern Pacific Railroad Company is sole owner, under and in virtue of the United States patent, a copy of which is attached to the Bill, and under and in virtue of the Acts of Congress and Joint Resolution therein referred to, of all lands described in the said attached copy, subject to the lien of the trust deeds or mortgages hereinbefore set forth, and the United States has no right, title or interest whatsoever in or to the said lands, or any part thereof.

The defendant Southern Pacific Company does not, nor does the defendant Kern Trading & Oil Company, own or hold any right, title or interest in

or to any of the said lands; and all material allegations of subdivision "VIII" of the Bill respecting or relating to the said two defendants, are untue.

IX.

The defendant Southern Pacific Railroad Company is the owner (subject to the liens of the aforesaid mortgages) in possession and entitled to the possession of, and entitled to extract all minerals and mineral deposits (if any there be therein or thereon) from the lands described in subdivision "V" of the Bill; and this defendant denies that the possession of said lands, or the extraction of mineral or mineral deposits (if any there be therein or thereon) therefrom, by any or all of the defendants, would be trespass or waste as against plaintiff, or would in anywise injure or concern the plaintiff. **[52A]**

X.

This defendant denies all and all manner of matter, cause or thing in the said Bill contained, material or necessary for it to make answer to and not herein well and sufficiently answered, traversed, avoided or denied, is true to its knowledge or belief.

All of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Court may direct; and it prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

JOHN QUINN,
J. W. McKINLEY,
Attorneys for the said Defendant.
JOHN QUINN,
Counsel for the said Defendant. **[53A]**

State of New York,
City and County of New York,—ss.

F. W. Fulle, being duly sworn, deposes and says: That he is Vice-President of The Equitable Trust Company of New York, one of the defendants mentioned in the foregoing Answer; that he has read the foregoing Answer and knows the contents thereof; that the allegations therein contained, so far as they relate to his own acts and deeds are true, and so far as they relate to the acts and deeds of others he believes them to be true; and that he has been informed as to the matters and things alleged and denied in the foregoing Answer which are not within his knowledge, and he believes all such allegations and denials to be true.

F. W. FULLE.

Subscribed and sworn to before me on May 1st, 1911.

[Seal] VINE H. SMITH,
Notary Public Kings County.

Certificate Filed in New York County.

(Endorsed:) Case No. 221. U. S. Circuit Court, Southern District of California, Northern Division. United States of America, Plaintiff, vs. Southern Pacific Co., et al., Defendants. Answer of Defendant The Equitable Trust Company of New York. John Quinn, J. W. McKinley, Attorneys for Defendant. Rec'd Copy of the within Answer this 12th day of May, 1911.

A. I. McCormick, U. S. Atty. Filed May 12, 1911.

Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[54A]**

At a stated term, to-wit: the January Term, A. D., 1912, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Monday, the twenty-ninth day of January, in the year of our Lord one thousand nine hundred and twelve.

Present:

The Honorable Olin Wellborn, District Judge.

UNITED STATES OF AMERICA,

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation, et al.,

Defendants.

C. C. No. 221, Northern Division.

On motion of A. I. McCormick, Esq., U. S. Attorney, and pursuant to the stipulation of the parties hereto, by their solicitors, filed herein January 13th, 1912, it is ordered that the time within which the evidence in chief for the complainants may be taken and completed be, and the same hereby is extended until and including the 31st day of May, 1912, that the defendants may have to and including the 30th day of July, 1912, within which to take and complete their testimony in said cause, and that the complainants may have to and including the 29th day of

August, 1912, within which to take and complete their testimony in rebuttal. **[55A]**

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

IN EQUITY
NO. 221.

STIPULATION.

WHEREAS, the above entitled Court, by its minute order duly given, made and entered on the 30th day of December, 1911, under and in pursuance of a written stipulation duly and regularly signed and agreed to by each and all of the parties to the above entitled cause, and their solicitors, appointed Leo Longley, Esquire, of Los Angeles, California, as Special Examiner of said Court to take the evidence, both oral and documentary, of the respective parties in said cause, and report the same to the Court, and

WHEREAS, it is the desire of each and all of the parties to said cause to enlarge and amplify said order.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between each and all of the parties to the above entitled cause, and

their solicitors, that the evidence of plaintiff and defendants respectively, both oral and documentary, shall be taken before said Leo Longley as Special Examiner in said cause; that said evidence shall be taken by said Leo Longley as such Special Examiner in the southernmost room of the United States District Court in the Federal Building in the City of Los Angeles, California, or at such other place, either within or without the Southern District of California, as he, **[56A]** the said Leo Longley as such Special Examiner may be advised by the respective parties to the above entitled cause; that the said evidence so to be taken by and before the said Leo Longley, Esquire, as such Special Examiner, may be by him, the said Leo Longley, personally or by and under his supervision, taken down in shorthand and thereafter by him, the said Special Examiner, or under his supervision and direction, transcribed into typewriting; that said evidence when so taken and transcribed, together with the documentary evidence offered and introduced before him, shall be by the said Leo Longley as such Special Examiner, returned, certified and filed with the Clerk of the District Court of the United States for the Southern District of California, and said evidence, both oral and documentary, when so taken and transcribed, certified and filed, shall thereafter be considered and shall constitute the evidence in said cause.

IT IS FURTHER STIPULATED that it shall not be necessary for either or any of the witnesses

whose testimony may be taken before said Special Examiner, to read over or sign his said testimony, but the same, when so taken and transcribed, certified and filed as aforesaid, may be used with the same force and effect as if each of said witnesses had read over and signed his said testimony after the same had been transcribed.

IT IS FURTHER STIPULATED that the taking of testimony on behalf of the complainant, United States of America, shall be commenced before said Leo Longley as such Special Examiner, on Tuesday, the 16th day of April, 1912, in the said Court Room of the United States District Court at Los Angeles, above described, and shall be continued thereafter at such times and places as the said Special Examiner may be advised by the Solicitors for said Plaintiff and may direct, provided that the taking of testimony by the said Plaintiff in its case in chief shall be completed on or before the 15th day of June, 1912, and the testimony of the defendants shall be completed on or before the 15th day of August, 1912, and the taking of [57A] the testimony of the plaintiff in rebuttal shall be completed on or before the 15th day of September, 1912.

IT IS FURTHER STIPULATED AND AGREED that should either of the parties to said cause desire to take or introduce testimony before said Special Examiner at any place other than in the City of Los Angeles, California, if the parties hereto can not agree by stipulation so to do, the other parties to said cause shall be entitled to and shall have not less

than ten days notice of the time and place of the taking of such testimony or evidence.

IT IS FURTHER STIPULATED AND AGREED that an order of the above entitled Court may be made and entered in conformity with this stipulation.

Dated this 14th day of March, 1912.

W. N. MILLS,
of Counsel

GEO. W. WICKERSHAM,
A. I. McCORMICK,
Attorneys for Plaintiff.

WM. SINGER, JR., Counsel, and GUY V. SHOUP and CHAS. R. LEWERS, Attorneys for all defendants other than the Equitable Trust Company of New York.

J. W. McKINLEY,
Attorneys for Defendant Equitable Trust Company of New York.

It is so ordered.

R. S. BEAN,
Judge.

FILED AND ENTERED
May 9th, 1912.

WM. M. VAN DYKE, Clerk,
By Murray C. White, Deputy Clerk. **[58A]**

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

IN EQUITY
NO. 221.

STIPULATION

WHEREAS, it is the desire of the plaintiff in the above entitled cause to take and introduce testimony before Leo Longley, as Special Examiner, at the City of Washington, District of Columbia, and

WHEREAS, the time in which the plaintiff in the above entitled cause may take its testimony and evidence expires under the Stipulation and Order now in effect on the 15th day of August, 1912, and it is the desire of the parties hereto to enlarge and extend said time as well as the time for taking the evidence of defendants and of plaintiff in rebuttal;

It is hereby stipulated and agreed by and between each and all the parties to said suit and their solicitors, as follows: That the time within which plaintiff may take and complete its testimony and evidence on its case in chief may be and the same hereby is enlarged and extended up to and including the 15th day of September, 1912, and that the tes-

timony and evidence of said defendants shall be taken and be completed by or before the 15th day of November, 1912, and the taking of the testimony and introduction of evidence in rebuttal by said plaintiff shall be completed on or before the 15th day [59A] of December, 1912.

It is further stipulated and agreed by and between each and all the parties to said suit and their solicitors that upon the adjournment of the hearing now pending before the said Leo Longley, as Special Examiner, at the court room of the United States Circuit Court of Appeals, in the Post Office Building at San Francisco, California, the further taking of testimony on behalf of the plaintiff in its case in chief shall start and be proceeded with on Monday, the 29th day of July, at the City of Washington, in the District of Columbia, at such hour on said day and at such place in said City as shall be designated by said Leo Longley, Special Examiner.

It is expressly understood that this stipulation shall not and is not intended to in any way change or alter the stipulation or order now in force governing the taking of the testimony and evidence in said suit except to enlarge the time and fix a date and place for the further resumption of the hearing herein as expressly stated.

It is stipulated that an order of court may be made and entered in conformity with this stipulation.

Dated this 9th day of July, 1912.

W. N. Mills,
Special Assistant to the Attorney General of the United States. Of Counsel.

Geo. W. Wickersham,
A. I. McCormick,
Attorneys for Plaintiff.

Wm. Singer, Jr.,
Chas. R. Lewers,
Guy V. Shoup,
Attorneys for all defendants other than the EQUITABLE TRUST COMPANY of New York.

J. W. McKinley,
per G. V. L.
Attorneys for defendant EQUITABLE TRUST COMPANY of New York.

It is so ordered.
R. S. Bean,
Judge.

FILED and entered August 12th, 1912.
Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [**60A**]

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Complainant.

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

IN EQUITY.
NO. 221.

STIPULATION

WHEREAS, the time in which the plaintiff in the above entitled cause may take its testimony and evidence expires under the Stipulation and Order now in effect on the 15th day of September, 1912, and it is the desire of the parties hereto to enlarge and extend said time as well as the time for taking the evidence of defendants and of plaintiff in rebuttal;

IT IS HEREBY STIPULATED AND AGREED by and between each and all of the parties to said suit and their solicitors, as follows: that the time within which plaintiff may take and complete its testimony and evidence on its case in chief may be and the same hereby is enlarged and extended up to and including the 1st day of October, 1912, and that the testimony and evidence of said defendants shall be taken and be completed by or before the 1st day of January, 1913, and the taking of the testimony and introduction of evidence in rebuttal by said plaintiff shall be completed on or before the 1st day of February, 1913.

It is further stipulated and agreed by and between each and all of the parties to said suit and their solicitors that [**61A**] upon the adjournment of the hearing now pending before Leo Longley, as Special Examiner, at the court room of the United States District Court for the Southern District of California, in the Post Office Building at Los Angeles, California, the further taking of testimony on behalf of the plaintiff in its case in chief shall start

and be proceeded with on Tuesday, the 17th day of September, 1912, at the City of Bakersfield, in Kern County, State of California, at such hour on said day and at such place in said City as shall be designated by said Leo Longley, Special Examiner.

It is expressly understood that this stipulation shall not and is not intended to in any way change or alter the stipulation or order now in force governing the taking of the testimony and evidence in said suit except to enlarge the time and fix a date and place for the further resumption of the hearing herein as expressly stated.

It is stipulated that an order of court may be made and entered in conformity with this stipulation.

Dated this 12th day of September, 1912.

Geo. W. Wickersham,
A. I. McCormick,
Attorneys for Plaintiff.

W. N. Mills,
Special Assistant to the Attorney General of the United States. Of Counsel.

Guy V. Shoup,
Charles R. Lewers,
Attorneys for all defendants other than the Equitable Trust Company of New York.

J. W. McKinley,
Attorneys for Defendant Equitable Trust Company of New York.

It is so ordered:
R. S. Bean,
Judge.

Filed and entered September 21st, 1912.
WM. M. VAN DYKE, Clerk.
By Murray C. White, Deputy Clerk. [**62A**]

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Complainant.

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

IN EQUITY.

NO. 221.

STIPULATION

WHEREAS, the time within which the defendants in the above entitled cause may take their testimony and evidence under the Stipulation and Order now in effect expires on the 1st day of January, 1913, and

WHEREAS, it is the desire of the defendants to have an enlargement of the time within which to take and complete the putting in of their said testimony in said cause and that the said time be extended to the defendants for said purpose until and including the 1st day of February, 1913, and

WHEREAS, under the stipulation now in force the time within which the plaintiff may introduce its testimony and evidence in rebuttal expires on the 1st day of February, 1913.

It is hereby stipulated by and between each and all of the parties to said suit and their solicitors as follows: That the time within which the defendants may take and complete their testimony and evidence in defense may be and the same hereby is

enlarged and extended up to and including the 1st day of February, 1913, at which time all of the testimony to be adduced by the defendants, and each of them, shall be fully completed and introduced and the taking of testimony and introduction of evidence in [**63A**] rebuttal by said plaintiff shall be completed on or before the 1st day of March, 1913.

It is expressly understood that this Stipulation shall not and is not intended to in any way change or alter the stipulation or order now in force governing the taking of testimony and evidence in said cause except to enlarge the time as aforesaid.

It is stipulated that an order of court may be made and entered in conformity with this stipulation.

Dated this 22nd day of November, 1912.

GEORGE W. WICKERSHAM,
Attorney General of U. S.
A. I. McCORMICK,
U. S. Atty,
Attorneys for Plaintiff.

W. N. Mills,
Special Assistant to the Attorney General of the United States. Of Counsel.

GUY V. SHOUP,
CHAS. R. LEWERS,
Attorneys for all defendants other than the Equitable Trust Company of New York.

J. W. McKINLEY,
Attorney for Defendant Equitable Trust Company of New York.

It is so ordered:

R. S. Bean,
Judge.

Filed and entered December 2nd, 1912.
WM. M. VAN DYKE, Clerk.
By Chas. N. Williams, Deputy Clerk. [**64A**]

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

IN EQUITY
NO. 221.

STIPULATION

WHEREAS, the time within which the defendants in the above entitled cause may take their testimony and evidence under the Stipulation and Order now in effect expires on the 1st day of February, 1913, and

WHEREAS, it is the desire of the defendants to have an enlargement of the time within which to take and complete the putting in of their said testimony in said cause and that the said time be extended to the defendants for said purpose until and including the 1st day of April, 1913, and

WHEREAS, under the stipulation now in force the time within which the plaintiff may introduce its testimony and evidence in rebuttal expires on the 1st day of March, 1913.

It is hereby stipulated by and between each and all of the parties to said suit and their solicitors as follows: That the time within which the defendants may take and complete their testimony and

evidence in defense may be and the same is hereby enlarged and extended up to and including the 1st day of April, 1913, at which time all of the testimony to be adduced by the defendants, and each of them, shall be fully completed and introduced and the taking of testimony and introduction of evidence in rebuttal by said plaintiff shall be completed on or before the 1st day of June, 1913. **[65A]**

It is expressly understood that this stipulation shall not and is not intended to in any way change or alter the stipulation or order now in force governing the taking of testimony and evidence in said cause except to enlarge the time as aforesaid.

It is stipulated that an order of Court may be made and entered in conformity with this stipulation.

Dated this 29th day of January, 1913.

GEORGE W. WICKERSHAM,
A. I. McCORMICK,
Attorneys for Plaintiff.

W. N. MILLS,
Special Assistant to the Attorney General of the United States, of Counsel.

GUY V. SHOUP,
CHAS. R. LEWERS,
Attorneys for all defendants other than the Equitable Trust Company of New York.

J. W. McKINLEY,
Attorneys for defendant Equitable Trust Company of New York.

It is so ordered:

Judge

[Endorsed]: No. 221. In the District Court of the

United States, for the Sou. Dist. of California, Nor. Div. United States of America, Complainant, vs. The Southern Pacific Co. et al., Defendants. Stipulation & Order. Filed Feb. 3, 1913, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. **[66A]**

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, ET AL.,

Defendants.

IN EQUITY
No. 221.

STIPULATION

WHEREAS, the time within which the defendants in the above entitled cause may take their testimony and evidence under the stipulation and order now in effect expires on the 1st day of April, 1913; and

WHEREAS, it is the desire of the defendants to have an enlargement of the time within which to take and complete the putting in of their said testimony in said cause and that the said time be extended to the defendants for said purpose until and including the 1st day of June, 1913; and

WHEREAS, under the stipulation now in force the time within which the plaintiff may introduce its testimony and evidence in rebuttal expires on the 1st day of June, 1913.

It is hereby stipulated by and between each and all of the parties to said suit and their solicitors as follows: That the time within which the defendants may take and complete their testimony and evidence in defense may be and the same is hereby enlarged and extended up to and including the 1st day of June, 1913, and the further taking of testimony and introduction of evidence by said plaintiff shall be completed on or before the 1st day of October, 1913.

It is further stipulated that the defendants will not ask for further enlargement of the time for the completion of **[67A]** their testimony in chief except upon application to the Court and then only upon showing of good cause therefor.

It is expressly understood that this stipulation shall not and is not intended to in any way change or alter the stipulation or order now in force governing the taking of testimony and evidence in said cause except to enlarge the time as aforesaid.

It is stipulated that an order of Court may be made and entered in conformity with this stipulation.

Dated this 19th day of March, 1913.

J. C. McREYNOLDS,
A. I. McCORMICK,
Attorneys for Plaintiff.

W. N. MILLS,
Special Assistant to the Attorney General of the United States, of Counsel.

GUY V. SHOUP,
CHAS. R. LEWERS,

Attorneys for all Defendants others than the Equitable Trust Company of New York.

J. W. McKINLEY,

Attorney for Defendant Equitable Trust Company of New York.

It is so ordered:

R. S. BEAN,

Judge.

Filed and entered March 21st, 1913.

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk. **[68A]**

At a stated term, to-wit: the January Term, A. D., 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Wednesday, the seventh day of May, in the year of our Lord one thousand nine hundred and thirteen.

Present:

The Honorable Robert S. Bean, District Judge.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

C. C. No. 221, Nor. Div.

This cause coming on this day to be heard on the motion of defendants for the enlargement of the time of defendants for taking testimony; Willis Mills,

Esq., Special Assistant to the U. S. Attorney General, and J. C. Crawford, Esq., Special Assistant to the U. S. Attorney General, appearing as counsel for the United States; Chas. R. Lewers, Esq., of counsel for defendants, having read his motion for the enlargement of the time for taking testimony and also an affidavit in support thereof; and said application for an enlargement of time having been opposed by Willis Mills, Esq., Special Assistant to the Attorney General; now, after presentation of said motion and the opposition thereto, it is by the court ordered that defendants' time for the taking of testimony herein be, and the same hereby is extended sixty (60) days from June 1st, 1913; whereupon, on motion of counsel for the United States, it is ordered that the time of complainants for taking testimony in rebuttal be, and the same hereby is extended to November 1st, 1913. **[69A]**

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA,

Plaintiff.

vs.

SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

IN EQUITY

No. 221.

W. N. MILLS, Special Assistant to the Attorney General, Attorney for the Government.

CHARLES R. LEWERS, Attorney for defendant Company.

R. S. Bean, District Judge. (Sitting by special assignment).

This suit was brought by the United States to regain title to about ten sections of land in the Elk Hills near McKittrick, in the State of California, theretofore patented to the defendant Southern Pacific Railroad Company under the Act of Congress of July 27, 1866, granting land to aid in the construction of its road. Mineral lands (except iron and coal) were exempt from the operation of the grant.

The lands in controversy are within the indemnity limits of the grant and were applied for and patented to the company as non-mineral lands in lieu of lands lost within place limits. The first selection list was tendered November 14, 1903, but rejected because the lands applied for had been withdrawn from entry. The suspension order was revoked by the Department in the spring of 1904 and lists were retendered, the final one upon which patents issued on September 6, 1904. The patents were issued in December of that year. Each selection list was accompanied by an affidavit of Eberlein, the land agent of the company, stating that he had "caused the lands selected in said company list No. **[70A]** 89 to be carefully examined by the agents and employees of said company as to their mineral or agricultural character, and that to the best of his knowledge and belief none of the lands referred in said list are mineral lands." The land officers accepted the affidavits and statements therein as true and passed the lands to patent.

The complaint charges that the affidavits accompanying the selection lists were false and that the lands were known oil bearing lands at the time of the proceedings resulting in the patents, and were procured in pursuance of a fraudulent scheme to acquire mineral lands under an agricultural grant. Issue has been joined on the averments of the bill, evidence taken and the case submitted for decision on the merits. The evidence is so voluminous that I cannot, without prolonging this memorandum beyond any reasonable limit, refer to it in detail. From it, however, I extract the following facts as either admitted or clearly proven.

(1) The lands in controversy were at the time of the proceedings resulting in the patents within a known and well recognized oil district and had been previously returned by the U. S. Surveyor as oil bearing lands, and at the time the selection list was first filed were within a previous withdrawal order of the department because of their probable oil character.

(2) They are rough broken, arid lands, of no substantial value for agricultural purposes or any other purpose than their oil contents.

(3) The statement in the affidavits of Eberlein that he has caused the lands to be carefully examined by the agents and employes of the company as to their mineral or agricultural character was and is untrue. This is admitted. Eberlein testified that he had not caused an examination of the lands to be made, and personally knew nothing about their character or con **[71A]** tents at the time he made

the several affidavits, and the insistence of the defendant throughout the case has been that no examination of the lands to ascertain their mineral contents had been made by any agent or employe prior to the issuance of the patents, although they had for a year or more maintained a corps of expert oil geologists who were actively engaged in examining and classifying lands in the vicinity for the purpose of ascertaining their character.

(4) I think it clearly appears from the documentary evidence in the case, and particularly from the correspondence from Eberlein's files (a portion of which was kept separate from the general files of the office and guarded with the utmost secrecy until compelled to be produced on this hearing) that at the time the selections were made and the patents issued the officers of the company in charge of the matter were conscious that the lands were if not actual at least probable oil bearing, and that the selections were made and strenuously urged to patent for that reason, and not because of their agricultural value. Nearly two months before the first selection list was filed, Eberlein wrote to Mr. Kruttschnitt, the vice-president of the company, saying that he expected to tender selection lists covering lands in the township in question within a week or ten days, and asking that Chambers, the Washington attorney of the company, be requested to give special attention to the patenting of the lands covered thereby. On October 12th Chambers wrote to Kruttschnitt, saying that as soon as advised that the list

had been transmitted he would at the earliest possible date urge the issuance of special patents, but calling attention to the fact that the township in question was within a withdrawal order, but if advised just what lands Eberlein desired to select he would ask the Department to direct Special Agent Ryan to examine the lands as quickly as possible and make special report as to their **[72A]** character. On December 10, 1913, within thirty days after the list had been tendered by Eberlein and rejected, he wrote to Chambers in reference thereto, saying: "I am particularly anxious in regard to this list, as the lands adjoin the oil territory, and Mr. Kruttschnitt is very solicitous in regard to it. I have had in mind the suggestion you made some time ago in regard to inducing Mr. E. C. Ryan, Special Agent at Los Angeles, to make his report. I am not acquainted with Mr. Ryan, and it is a matter for serious consideration as to how to approach him. It would not do, certainly, to ask for a report recommending the release of the lands selected by us from suspension. In my opinion it would not be politic to ask for a release in any particular district. Mr. Ryan would, in all probability, jump at the conclusion that the railroad had some special information in regard to that district, and the result would probably be that our request would have the opposite effect from that desired. All that I could do would be in a general way to ask him to submit a report of the lands covered by the order of suspension which, as you know, embraces a very large area. How would it do to ask

the Department to suggest to Mr. Ryan that he make a report of so much of the lands within the suspension limits as he has examined up to this time. It might be that such a report would cover the very district in which we are operating, and we would then be relieved from the danger of having called particular attention to any locality."

In the meantime, the defendant Kern Trading & Oil Company was organized for the purpose of taking over the oil lands of the defendant railroad company and operating same as a fuel department. To that end an instrument was prepared, without Eberlein's knowledge, leasing to the Oil Company lands belonging to the railway company in the vicinity of and adjoining the lands in dispute, which lease was forwarded to him for his **[73A]** signature on August 2, 1904. On September 3, 1904, Eberlein wrote W. B. Cornish, his superior officer, advising him of the proposed lease, pointing out several objections thereto and requesting advice as to the execution thereof, saying among other things: "I can stave off the delivery of this document for some time yet, I think, for the reason that if the knowledge of this lease becomes public property it will probably cause us a great deal of trouble in the United States Land Office, and may result in the loss of a large body of adjacent lands, which may hereafter turn out to be mineral and oil bearing. I found on taking charge of this office that a large body of our lands, especially indemnity lands in the Coalinga, McKittrick and Sunset fields, had been withdrawn by the United

States from entry, pending examination as to their mineral character. I have worked very hard and very steadily to get the United States to complete its report and dispose of this matter. I have just succeeded in getting the Special Agent in charge to make a report releasing our land from interdictment. If it becomes known that we have executed a lease of lands interspersed with those already under selection by us, and that the lease is for oil purposes, it seems to me that it will immediately encourage oil speculators to file upon the lands so selected, and that the government will have good ground for refusing patent, inasmuch as we practically fix the mineral status of the land by this lease."

Thereafter, and notwithstanding Eberlein's knowledge and belief as disclosed by his correspondence, he filed on September 6, 1904, selection list upon which patents were issued, accompanied by his affidavit that he had caused the lands to be carefully examined by the agents and employes of the company as to their mineral or agricultural character, and that to the best of his knowledge and belief none of the lands referred to in the list were mineral lands. **[74A]**

He subsequently and before the issuance of the patents wrote to the general manager of the company a letter of similar import, a copy of which was furnished to Dumble, the geologist in charge of the fuel department, and on October 6, 1904, he had an interview with Dumble in reference to the matter, which resulted in a letter from Dumble to the manager of

the company, on December 7, 1904, saying: "In connection with our correspondence regarding the transfer of property to the Kern Trading & Oil Company, I have had a conversation with Mr. Eberlein and it seems for reasons of policy regarding certain unpatented lands that it will be best not to execute the lease of lands between the S. P. R. R. Co. and the K. T. & O. Co. at present. I would therefore suggest that the papers covering the transfer of property from the S. P. Co. to K. T. & O. Co. be executed and that the lease of lands in the McKittrick and Coalinga districts from the S. P. R. R. Co. to the K. T. & O. Co. be held up for the present."

(5) The only question upon which I have had any doubt or difficulty is whether the evidence, notwithstanding the matters referred to, is sufficient to show that the patents should be set aside because the lands were in fact known oil lands at the time of the proceedings resulting in their issuance. There had been no actual discovery of oil within the boundaries of the lands at that time but this was not necessary to determine their oil character. Oil like coal occurs in stratified forms of deposit or rather migrates into and permeates stratified deposits and follows them persistently and continuously unless interrupted by some intrusion to the end. Lands therefore may and often do become valuable for oil through adjacent disclosures and other surrounding conditions, although there has been no actual discovery within their boundaries.

From a careful examination of the evidence I have

reached the conclusion that the topographical and structural [75A] formation and character of the lands and of the surrounding area, their proximity to and the known extent of oil development and oil lands to the south and west, and extending out and towards the lands in question, the seepages on or near the lands and the anticlinal structure thereof, and the then known surrounding conditions "were clearly such as to engender the belief that the lands contained mineral (oil) deposits of such quality and in such quantity as would render their extraction profitable and justify expenditure to that end" at the time of the proceedings which resulted in the patents, and this is the test for a similar deposit laid down by the Supreme Court in the Diamond Coal Case, 233 U. S. 236.

At the time the selection list was first filed the lands in controversy together with a large area of other lands were within a previous withdrawal order of the department because of their probable oil contents. At the request of the defendant company the department ordered an examination of the lands applied for by a special agent to ascertain whether they should be relieved for suspension, and upon his report the suspension order was revoked as to these lands and they were subsequently patented to the defendant. The claim is made that the department in issuing the patents relied upon the report of its own employes as to the character of the land, and not the affidavit accompanying the selection lists. The evidence shows that the agent making the examina-

tion and report was not an oil or mineral expert and was instructed by his superior in the Land Office "that it would be unnecessary to go over all the lands but to drive over part of them just as the 'crow flies,' and to interview ranchmen, stockmen, etc., as to the location of oil wells producing oil in paying quantities" and "to recommend that those lands be relieved from suspension on which he found no oil well producing oil in paying quantities," and that he acted accordingly, and **[76A]** made no examination whereby he determined or could determine whether in fact the lands were mineral in character. In his report he said that he "found no oil seepages, oil springs or other indications of oil or mineral of any kind that would tend in his opinion to warrant" the lands being classified as mineral in character, and therefore recommended that they be relieved from suspension.

These proceedings were in no sense an adjudication but a method adopted by the department for determining whether its previous order of withdrawal should be revoked and the lands opened to entry. They did not establish the non-mineral character of the lands nor relieve the company from the consequences of submitting false and misleading affidavits and proof upon which the land officers were expected to and no doubt did rely in issuing patents.

Upon the whole record I conclude that the plaintiff is entitled to the relief demanded.

A decree to that effect may be prepared for the signature of myself or the presiding judge of the court.

Dated at Portland, Oregon, June 9, 1915.

R. S. BEAN,
Judge.

[Endorsed]: CC No. 221 U. S. District Court, Southern District of California, Northern Division. United States of America, vs. Southern Pacific Company, et al., Memorandum of conclusions. Filed June 11, 1915, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. **[77A]**

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff.

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
HOMER S. KING, Trustee,
JAMES K. WILSON, Trustee,
THE CENTRAL TRUST COMPANY OF NEW YORK, a corporation,
THE EQUITABLE TRUST COMPANY OF NEW YORK, a corporation, and the
KERN TRADING & OIL COMPANY, a corporation,
Defendants.

IN EQUITY
No. 221.

Final Decree

This cause came on to be heard at this term and was argued by Counsel; and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED as follows:

1. That Patent No. 135 heretofore issued by the United States of America to the defendant Southern Pacific Railroad Company on the 12th day of December, 1904, embracing the lands in this suit which are specifically described in Paragraph V of the bill of complaint herein, as follows, to-wit: All of the following tracts of land situated in Township Thirty (30) South **[78A]** Range Twenty-three (23) East, Mount Diablo Base and Meridian, in the State of California, to-wit: All of Section fifteen, containing six hundred and forty acres; Lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven, and twelve of Section Seventeen, containing four hundred sixty-four acres and forty-nine hundredths of an acre; the lots numbered three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of Section nineteen, containing four hundred seventy-one acres and thirty-six hundredths of an acre; all of Section twenty-one, containing six hundred forty acres; all of Section twenty-three, containing six hundred and forty acres; the lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve and the West half of Section twenty-five, containing six hundred ninety-three acres and thirty-two hundredths of an acre; all of Section twenty-seven, containing six hundred forty

acres; all of Section twenty-nine, containing six hundred forty acres; all of Section thirty-three, containing six hundred forty acres; all of Section thirty-five, containing six hundred forty acres, is hereby annulled, revoked, cancelled, set aside and held for naught.

2. That the deed of trust mentioned in the bill of complaint and in the several answers herein, which was executed and delivered by the defendants Southern Pacific Railroad Company and Southern Pacific Company to the defendant Central Trust Company of New York, dated September 15, 1893, and also that certain supplemental trust deed executed by the same defendants to the said Central Trust Company of New York, dated August 18, 1898, amending the said first mentioned trust deed of September 15, 1893, in so far as the said trust deeds relate to or affect the lands hereinabove described, be and the same are hereby set aside and held for naught. **[79A]**

3. That the deed of trust mentioned in the bill of complaint and in the said several answers thereto which was executed and delivered by the defendant Southern Pacific Railroad Company to the defendant Equitable Trust Company of New York, dated January 3, 1905, in so far as the same relates to or affects the lands hereinabove described, be and the same is hereby set aside and held for naught.

4. That the deed of trust dated April 1, 1875, which was executed and delivered by the defendant Southern Pacific Railroad Company to certain trustees, of which the defendants Homer S. King and

James K. Wilson are the surviving trustees, in so far as the same relates to or purports in any wise to affect the lands hereinabove described, be and the same is hereby set aside and held for naught.

5. That the full legal and equitable title and ownership, including the right of immediate possession in and to all of said lands described in this decree, be and they are hereby restored to and vested in the United States of America, and that the defendants Southern Pacific Company, Southern Pacific Railroad Company, Kern Trading & Oil Company, Homer S. King, James K. Wilson, Central Trust Company of New York and Equitable Trust Company of New York, and each of them, and all persons claiming under them or either of them, are hereby declared and decreed to be without any right, title or interest, or claim whatsoever in or to any of the said lands, and are hereby enjoined from claiming or attempting to exercise any right, title, interest, lien or claim in or to the said lands or any part thereof. **[80A]**

And it is further ORDERED, ADJUDGED AND DECREED that this decree shall be recorded in the county records of Kern County, California, as a muniment of the plaintiff's title, and that the defendant Southern Pacific Railroad Company pay unto the plaintiff its costs in this suit to be taxed, in default whereof execution shall issue therefor.

Dated this 5th day of Aug. 1915.

R. S. BEAN,
District Judge.

Decree filed and entered August 9th, 1915, pursuant to order made by Hon. Benjamin F. Bledsoe, Judge U. S. Dist. Court at Los Angeles, Calif. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy.

[Endorsed]: C. C. No. 221 U. S. District Court, Southern District of California, Northern Division. United States of America vs. So. Pac. Company et al. Decree Filed Aug. 9, 1915. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. **[81A]**

No. 221

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation,

THE SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,

HOMER S. KING, Trustee,

JAMES K. WILSON, Trustee,

THE CENTRAL TRUST COMPANY OF NEW YORK, a corporation,

THE EQUITABLE TRUST COMPANY OF NEW YORK, a corporation,

THE KERN TRADING & OIL COMPANY, a corporation,

Defendants.

Order Enlarging Time for Appellee to File Praecipe for the Incorporation of Any Additional Portions of the Record in the Transcript on Appeal, and to Make Any Objections to, or Propose Any Amendments to, the Statement of the Evidence Filed by Appellants Herein.

Good cause being shown therefor, the time within which the above-named plaintiff and appellee, UNITED STATES OF AMERICA, shall be required to file with the Clerk of this court its praecipe indicating such additional portions of the record desired by it to be incorporated into the transcript of appeal herein, and the time in which said appellee shall be required to make any objections to, or propose any amendments to, the proposed statement of the evidence heretofore filed herein by the above-named defendants and appellants and marked "Exhibit A," is hereby enlarged and extended to and including the 20th day of April, 1916. **[82A]**

Dated February 12th, 1916.

R. S. BEAN,
District Judge.

[Endorsed]: Original. C. C. No. 221. In the District Court of the United States for the Southern District of California. United States of America, Plaintiff, vs. Southern Pacific Company, et al., Defendants. Order enlarging time for appellee to file Praecipe for the incorporation of any additional portions of the record in the Transcript on Appeal * * * Filed Feb. 12, 1916. Wm. M. Van Dyke, Clerk, By Leslie S. Colyer, Deputy. Eq. O. B. 166. **[83A]**

No. 221

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation,

THE SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,

HOMER S. KING, Trustee,

JAMES K. WILSON, Trustee,

THE CENTRAL TRUST COMPANY OF NEW YORK, a corporation,

THE EQUITABLE TRUST COMPANY OF NEW YORK, a corporation,

THE KERN TRADING & OIL COMPANY, a corporation,

Defendants.

Order Enlarging Time for Appellee to File Praecipe for the Incorporation of Any Additional Portions of the Record in the Transcript on Appeal, and to Make Any Objections to, or Propose Any Amendments to, the Statement of the Evidence Filed by Appellants Herein.

Good cause being shown therefor, the time within which the above-named plaintiff and appellee, UNITED STATES OF AMERICA, shall be required to file with the Clerk of this court its praecipe indicating such additional portions of the record de-

sired by it to be incorporated into the transcript of appeal herein, and the time in which said appellee shall be required to make any objections to, or propose any amendments to, the proposed statement of the evidence heretofore filed herein by the above-named defendants and appellants and marked "Exhibit A," is hereby enlarged and extended to and including the 20th day of April, 1916.

Dated February 19, 1916.

OSCAR A. TRIPPET,
District Judge. **[84A]**

[Endorsed]: C. C. No. 221. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America, vs. The Southern Pacific Company, et al., Order. Filed Feb. 19, 1916, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Eq. Order Book 168. **[85A]**

At a stated term, to wit: The Special January Term, A. D. 1916, of the District Court of the United States, for the Southern District of California, Northern Division, held at the court room thereof in the city of Los Angeles, on Friday, the seventeenth day of March, in the year of our Lord One Thousand Nine Hundred and Sixteen;

Present:

The Honorable Benjamin F. Bledsoe, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

C. C. No. 221. N. D.

Albert Schoonover, Esq., U. S. Attorney, and E. J. Justice, Esq., Special Assistant to the U. S. Attorney General; Chas. B. Lewers, Esq., and Joseph H. Call, Esq., appearing as counsel for defendants, the Southern Pacific Company, et al; and counsel for the United States having moved the court to allow the Government sixty (60) days additional time within which to prepare reply statements and amendments to the bill of exceptions or statement on appeal of defendants; and said motion for additional time having been argued, in support thereof by Albert Schoonover, Esq., U. S. Attorney, of counsel for the United States, and in opposition thereto by Chas. R. Lewers, Esq., of counsel for defendants Southern Pacific Company, et al., and in support thereof in reply by E. J. Justice, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States, and in opposition thereto in reply by Joseph H. Call, Esq., of counsel for defendants Southern Pacific Company, et al; it is now by the court ordered that complainants be, and they hereby are granted thirty (30) days additional time from and after April **[86A]** 20th, 1916, within which to prepare said reply statements or amendments to the statement of defendants on their appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit; and it is further ordered, on motion of Joseph H. Call, Esq., of counsel for defendants Southern Pacific Company, et al., and with the consent of all parties, that thirty (30) days' additional time from May 20th, 1916, (and

date of citation), be, and hereby is granted within which to file the transcript of the record on appeal in this cause in the United States Circuit Court of Appeals for the Ninth Circuit. **[87A]**

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

IN EQUITY

No. 221.

Order

For good cause shown, the time heretofore fixed in which appellee is required to propose amendments to the statement of record on appeal, is hereby extended to and including June 1, 1916.

Dated this 15th day of May, 1916.

BLEDSOE,

Judge.

[Endorsed]: No. 221 Equity. In the District Court of the United States for the South. Dist. of California, Northern Division. United States of America, Plaintiff, vs. Southern Pacific Company, et al., Defendants. Order. Filed May 15, 1916, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Eq. Order Book 173. **[88A]**

At a stated term, to wit: The Special January Term, A. D., 1916, of the District Court of the United States, for the Southern District of California, Northern Division, held at the Court Room thereof in the City of Los Angeles, on Wednesday, the thirty-first day of May, in the year of our Lord One Thousand Nine Hundred and Sixteen;

Present:

The Honorable Benjamin F. Bledsoe, District Judge.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

C. C. No. 221 N. D.

On motion of E. J. Justice, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States, and with the consent in open court of Charles R. Lewers, Esq., of counsel for defendants, it is, at the hour of 2:20 o'clock, P. M., by the court ordered that the matter of the settlement of the statement of evidence in proposed bill of exceptions and objections and amendments proposed thereto be hereafter taken up by the court on five (5) days' notice, regularly made, served and filed herein. **[89A]**

At a stated term, to wit: The July Term, A. D. 1916, of the District Court of the United States, for the Southern District of California, Northern Division, held at the court room thereof, in the City of Los Angeles, on Monday, the eighteenth day of Sep-

tember, in the year of our Lord One Thousand Nine Hundred and Sixteen;

Present:

The Honorable Edward E. Cushman, District Judge.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY, et al.,

Defendants.

C. C. No. 221 N. D.

This cause coming on this day to be heard on defendants' motion for the correction, settlement and approval of the condensed statement on appeal herein; F. P. Hopgood, Esq., Special Assistant to the U. S. Attorney General, and Albert Schoonover, Esq., U. S. Attorney, appearing as counsel for the United States; Joseph H. Call, Esq., appearing as counsel for defendants; and said motion having been argued, on behalf of the defendants, by Joseph H. Call, Esq., of counsel for defendants, and on behalf of the Government by F. P. Hopgood, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States; the court directs that counsel for the respective parties meet and endeavor to agree upon a settlement of said condensed statement on appeal, and it is by the court ordered that, for the settlement of such matters connected with said condensed statement on appeal as counsel cannot agree upon, this cause be, and the same hereby is continued for hearing of same until Wednesday, the 4th day of October, 1916, at 10 o'clock, A. M., at Fresno, California, before Hon. Robert S. Bean, District Judge. [90A]

At a stated term, to wit: The Special October Term, A. D. 1916, of the District Court of the United States for the Southern District of California, Northern Division, held at the court room thereof, in the city of Fresno, California, on Wednesday, the fourth day of October, in the year of our Lord One Thousand Nine Hundred and Sixteen:

Present:

The Honorable Robert S. Bean, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

C. C. No. 221 N. D.

This cause coming on this day for the settlement of the Statement of the Case, on appeal, now, on motion of Frank Hall, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States, no counsel appearing on behalf of defendants, it is ordered that this cause be, and the same hereby is continued for hearing regarding said settlement.

[91A]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

It is ordered that the condensation of the testimony of any witness as proposed by the government, where no objection is made by the appellant, be incorporated into the statement of the testimony to be used on appeal, and that the condensation of the testimony of any witness proposed by the appellant, where no objection is made by the government, be incorporated in and become a part of such statement. And that as to the remainder, that part of the condensation of the testimony of a witness by the appellee to which no objection is made shall be incorporated in and become a part of the statement, and that as to the remainder of such condensation, the questions and answers shall be included unless counsel otherwise agree.

Appellant's counsel shall serve a statement upon appellee's counsel designating the parts to which they object and which they desire to have inserted by questions and answers, within thirty days, and upon such notice being given, counsel for appellee shall have thirty days in which to designate any additional parts to be inserted by questions and answers.

R. S. BEAN,
Judge.

Dated San Francisco, October 18, 1916.

[Endorsed]: C. C. 221-N. D. United States vs. So. Pac. Co. et al., Order as to Condensed Statement on Appeal. Filed Oct. 19, 1916, Wm. M. Van Dyke, Clerk, T. F. Green, Deputy. **[92A]**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

No. 221

IN EQUITY.

Stipulation of Counsel with Reference to Statement of the Evidence on Appeal

After conference between counsel representing the plaintiff, appellee, and the defendants, appellants, in the above entitled cause, concerning the statement of the evidence to be incorporated in and made a part of the transcript of the record on appeal therein, it is by them STIPULATED AND AGREED as follows:

1.

That the parts of the original record proposed in paragraphs numbered I, II, III, IV, V, VI-A, VI-B, VII, XII, XIII, XVI, XVII, XVIII, XX, XXII, and XXIII of Appellants' Designations filed in the office of the Clerk on November 2, 1916, pursuant to an order in that regard made by District Judge Robert S. Bean on October 18, 1916, shall be incorporated in the statement of the evidence as a part of the transcript on appeal.

2.

That the parts of the original record proposed in

paragraphs numbered VIII, IX, X, XI, XIV, XV, XVIII, XIX, and XXI of appellee's Designations filed in the office of the Clerk on November 16, 1916, pursuant to an order in that regard made by **[93A]** District Judge Robert S. Bean on October 18, 1916, shall be incorporated in the statement of the evidence as part of the transcript on appeal.

3.

That none of the evidence of William J. Meyers shall be incorporated in the statement of the evidence on appeal, but that all of his evidence, including reports and documents read into the record while he was on the stand from page 2398 of the original record to page 2457 thereof and from page 2544 thereof, shall be transcribed, treated as an exhibit, bound with the volume or volumes of exhibits and sent up as an original document without being printed.

4.

That the abstract of Location Notices contained in the original record from page 2650 to 2837 both inclusive thereof and all condensations thereof shall be excluded from the statement of the evidence on appeal, but shall be transcribed from the original record in full, treated as an exhibit, bound with the volume or volumes of exhibits and sent up as an original document without being printed.

5.

That all condensations of the evidence of W. E. White shall be stricken out and his testimony stated as a part of the evidence on appeal by questions and answers from the original record from page 7098 to

page 7138 both inclusive thereof; but that the drilling reports and other documents read into the record while this witness was on the stand shall be excluded from the statement of his evidence, transcribed in full from the original record, treated as an exhibit, bound with the volume or volumes of exhibits and sent up as an original document without being printed. **[94A]**

6.

That all condensations of the verbal testimony of George W. Stewart be stricken out and that the verbal testimony of said Stewart shall be stated in the evidence on appeal by questions and answers from the original record; but that all exhibits and documents introduced in evidence or read into the record while said witness was on the stand shall be excluded from the statement of the evidence on appeal and shall be transcribed in full from the original record, treated as an exhibit, bound with the volume or volumes of exhibits and sent up as an original document without being printed.

7.

That all condensations of the evidence of W. J. Luke, Jr., shall be stricken out and that said witness' testimony shall be stated by questions and answers from the original record from page 4766 to page 4876 both inclusive thereof.

8.

That in lieu of the statement on page 793 of appellants' original condensation entitled OMISSION OF TESTIMONY there shall be inserted at the end of

the statement of the evidence to be included in the transcript on appeal the following:

"TESTIMONY OMITTED. During the Trial appellants raised the issue of whether petroleum is a mineral, contending that neither within the meaning of the Act of Congress of July 27, 1866 and the Joint Resolution of June 28, 1870 nor within the meaning of any Act of Congress or any recognized or established meaning is it such; and much testimony upon said issue was introduced both by appellants and appellee which is not made a part of this statement of the evidence on appeal for the reason that in the interval between the introduction of such testimony and the submission of the case the Supreme Court of the United States handed down its decision in the case of Edmund Burke vs. **[95A]** Southern Pacific Railroad Co., 234 U. S. 669 holding that petroleum is a mineral, and thus making such testimony immaterial."

9.

That all documents and exhibits introduced in evidence by the several parties shall be suitably bound by the Clerk and transmitted to the United States Circuit Court of Appeals for the Ninth Circuit as original documents without being printed; but that such documents, reports and other exhibits as have been incorporated in the statement of the evidence of the several witnesses heretofore prepared or condensed by either party and by the order of District Judge Bean or the consent of counsel agreed upon as the evidence of such witnesses to be included in the

transcript of the record on appeal, shall be retained therein, form part of such evidence and be printed therewith.

10.

That in preparing the final draft of the statement of the evidence to be included in the transcript of the record on appeal appellants shall, as far as possible, set out the evidence of the several witnesses in the order in which they were sworn and in which their testimony is reported in the original record.

San Francisco, Cal.,
November 29, 1916.

JOSEPH H. CALL,
Of counsel for appellants.

F. P. HOBGOOD, JR.,
Of counsel for appellee.

[Endorsed]: No. 221. In the District Court of the United States for the So. Dist. of California, Northern Divis. United States vs. Southern Pacific Co., et al., Stipulation of Counsel with reference to Statement of evidence on Appeal. Filed Dec. 1, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. **[96A]**

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

No. 221
IN EQUITY.

Stipulation of Counsel as to Setting Appeal for Argument.

IT IS STIPULATED AND AGREED by and between counsel representing the several parties to the above entitled cause that the argument of the appeal therein to the United States Circuit Court of Appeals for the Ninth Circuit shall be set for argument in said Circuit Court of Appeals for the May Session 1917 thereof and for a day certain between the seventh day of May and the fifteenth day of May 1917; and that this stipulation shall be filed with the transcript of the record on appeal.

San Francisco, Cal.,
November 29, 1916.

JOSEPH H. CALL,
Of counsel for appellants.
F. P. HOBGOOD, JR.,
Of counsel for appellee.

[Endorsed]: No. 221. In the District Court of the United States for the So. Dist. of California, Northern Divis. United States vs. Southern Pacific Co., et al., Stipulation of counsel as to Setting appeal for argument. Filed Dec. 7, 1916, Wm. M. Van Dyke, Clerk, by Chas. N. Williams, Deputy Clerk. **[97A]**

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

IN EQUITY
No. 221

Stipulation of Parties with Reference to Condensed Statement of Evidence.

It is stipulated and agreed by and between the undersigned counsel representing the plaintiff and the defendants in the above entitled cause that the condensed statement of evidence to be printed upon appeal heretofore transcribed and compiled under the direction of Francis P. Harrington and consisting of three volumes, the first volume comprising pages 1 to 1011 inclusive, the second volume comprising pages 1012 to 2340 inclusive and the third volume comprising pages 2341 to 3200 inclusive, is in conformity with orders heretofore made by Honorable Robert S. Bean, the judge who rendered the decree from which this appeal is prosecuted, and the several stipulations of counsel representing the parties to said cause with reference to the condensed statement of the evidence on appeal under the provisions of the pertinent rules of practice in equity.

It is further stipulated and agreed that one volume of exhibits and evidence containing 786 pages, transcribed by said Harrington and to be bound and transmitted as original documents, but not to be printed, is in conformity with the stipulations of counsel in that regard heretofore made. **[98A]**

It is further stipulated and agreed that, if there shall hereafter, whether before or after printing, be discovered in the statement of the evidence on appeal or the exhibits any error or errors made in transcribing such evidence or exhibits from the original record, where agreed upon, or from the condensation

heretofore made by the parties, where agreed upon, such error or errors shall be corrected; and that, if any material omission of evidence be discovered, such omission shall be supplied; and that in any and all such cases the undersigned will unite in signing and transmitting to the clerk of the circuit court of appeals such instructions as may be necessary to accomplish the purpose and intent of this stipulation.

San Francisco, Cal.,
January 26, 1917.

F. P. HOBGOOD, JR.,
Of counsel for plaintiff
JOSEPH H. CALL,
Of counsel for defendants.

(Endorsed): No. 221. In the District Court of the United States, for the Southern Dist. of Calif., Northern Div'n. United States of America, Plff., vs. Southern Pacific Co., et al., Defts. Stipulation of parties with reference to condensed statement of evidence. Filed Jan. 27, 1917. Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. **[99A]**

No. 221

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Defendants.

Order Approving Statement of Evidence on Appeal.

This cause coming on to be heard this 27th day of January, 1917, on motion of counsel for appellants, defendants in said District Court, to approve as true, complete and properly prepared the condensed statement of evidence upon appeal; counsel for both sides being present;

Now, therefore, upon consideration thereof, it is ordered by the court that said condensed statement of testimony to be printed as a part of the record upon appeal, in pursuance of the designations and stipulations of the respective parties, and orders of the court, be and the same is hereby approved, the same having been transcribed by F. P. Harrington, and consisting of three volumes and containing 3200 pages in all, to be so printed as a part of the record upon appeal.

And it is further ordered, that one volume of exhibits and evidence containing 786 pages, transcribed by said F. P. Harrington, stipulated by the respective parties to this cause to be transcribed, bound and transmitted to the court upon appeal as original documents, but not to be printed, is hereby approved and shall be so bound and transmitted by the clerk as a part of the record upon appeal without being printed;

And it is further ordered, that the remaining exhibits and maps filed in evidence as a part of the record in this cause, shall in pursuance of stipulations of the parties, be suitably **[100A]** bound by the clerk of this court and transmitted as a part of the

record upon appeal herein as original documents, without being printed;

And it is further ordered, that said condensed statement of evidence, together with said exhibits, evidence and documents, so stipulated by the respective parties to be bound and transmitted without being printed, be and the same are hereby approved as the true, complete and properly prepared statement of evidence upon appeal.

OSCAR A. TRIPPET

Judge United States District Court, Southern District of California.

(Endorsed) No. 221. In the District Court of the United States for the Ninth Circuit, Southern District of California, Northern Division. United States of America, Plaintiff, vs. Southern Pacific Company, et al., Defendants. Order Approving Statement of evidence on appeal. Filed Jan. 27, 1917. Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Eq. Order Book. **[101A]**

(Endorsed) Original. Equity No. In the United States Circuit Court of Appeals for the Ninth Circuit. The Southern Pacific Company, a corporation, et al., Appellants, vs. The United States of America, Appellee, Exhibit A. To be Printed. Volume I. Filed Jan. 27, 1917. Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. F. P. Harrington, Transcriber. **[101½A]**

EQUITY
No. 221

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC COMPANY, a corporation, et al.,
Defendants.

EXHIBIT A

Condensed Statement of Evidence in Transript on Appeal as Approved by the Court and to be Printed.

VOLUME I. [1]

JAMES MALCOLM GLEAVES, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am chief clerk in the office of the United States Surveyor-General for California. I am acquainted with the regulations and practice of that office with reference to the custody of plats of survey and field notes and their transmission to the General Land Office. The regulations require that a United States Deputy Surveyor, upon the completion of a contract, shall file the field notes of his returns with the Surveyor-General. They are taken up for examination and platting in the regulation order of receipt, and upon their approval by the Surveyor-General, a transcript of the official field notes of survey, as well

as a duplicate copy of the original plat, is forwarded to the Commissioner of the General Land Office for his acceptance. On April 18, 1906, the records in the office of the Surveyor-General, and the plats of survey and field notes for all of the townships of Kern County, California, were destroyed. Since that time the General Land Office has furnished our office with copies of the duplicates and copies furnished the General Land Office by our office. In preparing the plats of survey, a duplicate is made for the General Land Office and a so-called triplicate made for the local land office. Copies of the field notes are also made for the General Land Office. I know officially that plats of surveys of the following townships were so furnished to the General Land Office before the destruction of the records of the Surveyor-General's office by the fire of 1906, to wit: Townships 30, 31 and 32 South, Ranges 21, 22, 23 and 24 East, Mount Diablo Meridian, and Township 11 North, Ranges 23 and 24 West, San Bernardino Meridian. **[2]**

CROSS-EXAMINATION OF JAMES MALCOLM GLEAVES.

I was employed in the Surveyor-General's office in San Francisco prior to December 12, 1904. I was appointed chief clerk of that office on the 31st day of March, 1898, and I have been employed in that capacity ever since. I am presuming that the maps and field notes were filed with the General Land Office because of the fact that after the destruction of the office, copies thereof were furnished our office.

Thereupon the plaintiff offered in evidence a certi-

fied and exemplified copy by the General Land Office of the plat of survey of Township 11 North, Range 23 West, San Bernardino Meridian, approved in the Surveyor-General's office on November 19, 1858, which said plat of survey was marked plaintiff's exhibit "A," and, together with all other exhibits offered by the plaintiff, is made a part of the record and transmitted to the Circuit Court of Appeals pursuant to the order of Judge Ross dated January 29, 1916, which reads in part as follows:

> "That in preparing the transcript of the record upon appeal, that all maps and exhibits introduced in evidence by either or all parties may be bound in volumes and transmitted by the clerk as original documents as a part of the record upon appeal without being transcribed."

Thereupon the plaintiff offered in evidence a certified and exemplified copy of plat of survey of Township 11 North, Range 24 West, San Bernardino Meridian, approved in the Surveyor-General's office for California April 29, 1874, which said plat was marked plaintiff's exhibit "B."

Thereupon the plaintiff offered in evidence a certified and exemplified copy of plat of survey of Township 30 South, Range 22 East, Mount Diablo Meridian, approved in the Surveyor-General's office for California August 17, 1871, which said plat was marked plaintiff's exhibit "C." [3]

Thereupon the plaintiff offered in evidence a certified and exemplified copy of plat of survey of Township 30 South, Range 22 East, Mount Diablo

Meridian, approved in the Surveyor-General's office for California November 18, 1893, which said plat was marked plaintiff's exhibit "D".

Thereupon the plaintiff offered in evidence a certified and exemplified copy of plat of survey of Township 30 South, Range 23 East, Mount Diablo Meridian, approved in the Surveyor General's office for California August 1, 1902, which said plat was marked plaintiff's exhibit "E".

Thereupon the plaintiff offered in evidence a certified copy of an original map made by the United States Geological Survey, under authority of law of the United States, published and on file in the archives of the survey, known as Preliminary Geologic and Structural Map of the McKittrick and Sunset Oil Regions, California, Plate 1, Bulletin 406, which said map was thereupon marked plaintiff's exhibit "F".

Thereupon the plaintiff offered in evidence certified and exemplified copies under the seal of the General Land Office of the following papers, to-wit: List No. 89, "Lands Selected by the Southern Pacific Railroad Company, Indemnity Limits Main Line", dated September 12, 1904; attached to which as a part thereof are the following two affidavits, which were read in evidence as follows, to-wit: "State of California, City and County of San Francisco, ss. I, Charles W. Eberlein, being duly sworn, depose and say: That I am the Acting Land Agent of the Southern Pacific Railroad Company, successor by consolidation to the Southern Pacific Railroad Com-

pany (of California); that the foregoing list of lands which I hereby select is a correct list of a portion of the public lands claimed by the said Southern Pacific Railroad Company, successor as aforesaid, as inuring to it to aid in the construction of the railroad of said company from Lerdo to Sumner, for which a grant of [4] lands was made by the Acts of Congress approved July 27, 1866, July 25, 1868, and June 28, 1870, as aforesaid; that the said lands are vacant, unappropriated, and are not interdicted mineral or reserved lands, and are of the character contemplated by the grant, being within the limits of the exterior ten (10) miles Indemnity Belt, on each side of the line of route for a continuous distance of twenty (20) miles, being for the sixth (6th) section of said road, starting from a point in N. E. ¼ of Sec. 9, T. 28 S. R. 26 E. M. D. B. & M. and ending at a point in N. E. ¼ of Sec. 5, T. 30 S. R. 29 E. M. D. B. & M., and that the specific losses for which indemnity is claimed are truly set forth and described in said list, and that said losses have not heretofore been indemnified in any manner. (Signed) Charles W. Eberlein, (Seal). Sworn to and subscribed before me, this thirty-first (31st) day of August, 1904. Witness my hand and Notarial Seal. (Signed) E. B. Ryan, Notary Public in and for the City and County of San Francisco, in the State of California." "State of California, City and County of San Francisco, ss. Charles W. Eberlein, being duly sworn, deposes and says: that he is the Acting Land Agent of the Southern Pacific Railroad Company, that he has

caused the lands selected in said company's list No. 89 to be carefully examined by the agents and employees of said company as to their mineral or agricultural character, and that to the best of his knowledge and belief none of the lands returned in said list are mineral lands. (Signed) Charles W. Eberlein. Subscribed and sworn to before me this 31st day of August, 1904, E. B. Ryan, Notary Public in and for the City and County of San Francisco, State of California", which said selection list No. 89 was marked plaintiff's exhibit "G", and is transmitted as a whole in the same manner as plaintiff's exhibit "A".

W. H. HILL, a witness called and sworn on behalf of the plaintiff, testified as follows: [5]

DIRECT EXAMINATION

I reside in Bakersfield, Kern County, California, and am in the oil business, and am a maker of oil maps. I am a member of the firm of Barlow & Hill. That firm, in 1904, published a map of the California oil fields of Kern River, Coalinga, Sunset, Midway and McKittrick districts. The sheet marked Range 21 East, 22 East, and 30 South, "McKittrick Oil Fields", was constructed by us in the following manner: We have copies of all these separate townships, obtained from the land office in Visalia, giving the outline and the acreage and the survey direction. From these, I compile these maps myself, as far as the outline and the acreage is concerned. The other data on the map was nearly all obtained by my personal visit. The other data consists principally in

the location of oil wells or oil drilling rigs or abandoned wells. This is the data that I speak of as obtained by personal visit of myself through the fields. A drilling rig is indicated on this map by a circle with a dot in the center. A derrick is indicated only by a circle. When oil is struck, the whole interior of the circle is blackened. If the well was abandoned, four short marks are made on the opposite sides of the circle. The date on the map is 1904 and it is a correct picture of the oil conditions in the particular townships it purports to picture at that time. The same facts as to the manner of construction apply to the map marked Ranges 23 and 24 East, and Townships 31 and 32 South, called the "Midway Oil Fields", and to the map marked Range 24 West, Range 23 West, and Townships 11 and 12 North, called "Sunset Oil Fields". I personally visited every place on there, or nearly every one, and obtained from the owners the exact location, as nearly as could be. It was admitted that none of the maps attempt to picture townships known as 20-23. The book, including these maps, is marked plaintiff's exhibit "HD". We published twenty-five hundred copies of this [6] edition, including the maps, and sold all of them, generally in single copies. Probably two-thirds were sold in and around the oil fields in Kern County. The balance were sold in Los Angeles and San Francisco, except a few sent East by mail and to the old country. This map was completed and published before August 31, 1904. All the printed matter in this book was prepared by me personally,

except the advertisements were attended to by my partner. The names of the companies I got from the superintendents and I obtained some of the locations of the particular part of the property on which a well was located from them. Some of the information I got from the abstract office. I did not go in every case upon the section. I only went where there was development. In many cases I got my information from individuals, from the abstract office, or from whatever source I thought was reliable. As far as these three maps are concerned, they are based on my personal visits to each and every claim, but in the Coalinga case I took most of the information from other parties and did not go on personal investigation as I did in these three maps. [7]

A. C. VEATCH, called and sworn as a witness for the plaintiff, testified as follows:

DIRECT EXAMINATION

I was connected with the Geological Survey of the United States between the years 1902 and 1910, inclusive, and during that time had experience in the making of topographical maps. I did not make the map marked "I-LL" for identification, but I compiled portions of it. The map is a photograph of two topographic atlas sheets of the Geological Survey known as the Bakersfield Quadrangle and the McKittrick Quadrangle. These sheets were pasted together and the portion covering this map enlarged to the present scale. The dark line running through the center shows the point at which the two quadrangles were joined. The map differs from the original

sheets in the addition on the face of it of the section numbers and other additions placed there by me on information that I had from personal investigation in the fields and from the maps of Barlow & Hill, of 1904, known as exhibits "HA", "HB" and "HC". I obtained the quadrangles at the Geological Survey. They were made from sheets in the field, field work. I have used the open red circles for wells uncompleted; that is, those drilling, standing, or abandoned in 1904, and a solid red circle for those which had produced or were producing in 1904. The Elk Hills, so-called, and the Buena Vista Hills, so-called, are pictured on this map. I have outlined the features as shown by the contour lines with a heavy brown line to enable one to pick them up quickly. Exhibits "HA", "HB" and "HC" are substantially a correct picture as shown by the Barlow & Hill Maps of the conditions in that oil field so far as the oil development was concerned in 1904. The sections marked with red lines in Township 30 South, 23 East, are the lands involved in this suit, according to the description furnished me. The black lines here in 30-23 are the anticlinal axis where the arrow points away from the line. The same is true as to the other black lines on the map. Where [8] the arrows point towards the line, it is the synclinal axis. The legend on the margin correctly designates the symbols.

Thereupon, the plaintiff offered in evidence the map identified by the witness and marked Plaintiff's Exhibit "I".

CROSS-EXAMINATION

This map was not prepared by me. The base is a photograph from quadrangles of the Geological Survey. I have been over the map and find it substantially correct, and have indicated anticlinal axes where I have found them. I would say that all the map is a matter of compilation which I have checked up in the field. I have not checked all the wells indicated, as it cannot be done at the present time. The portion of the map which is not the result of my own personal investigations is the detail topography. I did not sketch each line of it. I verified the general aspect of it as a correct picture. I checked the map in Township 30-23 and in the Temblor Range in those adjoining hills to verify its general correctness for the purpose of introducing it as a picture of the regions. The synclinal axis between the Elk Hills and the McKittrick-Buena Vista Hills is a matter of personal observation. The position of the axis of the anticline in the McKittrick Hills,—that is, the eastern end,—is a matter of exact determination on the ground. The indication of the anticline and synclines upon the map, the ones that I have indicated, is the result of my own investigation, and the others are taken from other maps. A portion of these were taken subject to verification and correction from field investigation, from the map prepared by Ralph Arnold and Harry Johnson. I was chairman of the oil Land Classification Board of the Geological Survey and, as such, had to classify the land on the map,

and I discussed the map (Plaintiff's exhibit "I") with Mr. Arnold. [9]

S. G. DROUILLARD, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I live in Inyo County, California, and am in the bee business. I have prospected and mined most of my life, having been in the mining and prospecting business something like thirty or thirty-five years. I was engaged in the oil business from 1899 to about 1904. I have made mineral locations in Kern County. I have forgotten the townships and ranges that I located. I located some land in Midway; some in Temblor; some in McKittrick; and some also in what is called Elk Hills, which we called at that time Buena Vista Hills. We located these lands for oil. That was in 1899, I think. I am acquainted with the outcroppings of oil sands [10] or oil seepages in that country. I have seen oil outcroppings or seepages. I disremember the section it was on, but it is between two and one-half and three miles a little south of west of the old "Headquarters Ranch" where the bridge crosses the slough—right here (witness indicates place on map). We got all our water from that place. That would be on section 15 in 30-24. We found the outcroppings of oil sand; gas and sulphur mixed with it. I disremember how extensive it was, but it was quite a belt of sand cropping. We did some work on it; a little, but not much. We stopped there an hour or an hour and a half after we located it. On the strength of these oil seeps was the reason

we located the land. Associated with me was Jim Wagy, S. M. Wagy, Charles Lemont, Thomas Baker, Jeff Packard, John Jean, and others. I have been in Kern County since 1854 and have been over in this oil field many times during that time. I worked for Miller & Lux there on the range. When I first remember that country, the first development work that was ever done there was done about three miles north and west of McKittrick at a location at that time called the Bond Spring or the lower San Maria Spring. There was a small derrick put up there at that time by a man named Bond. That was along in 1874 that I saw it. Of course, Bond had done some work there before that time. In that year, oil was running out of Bond's well. He had a well sunk there. This was three miles from McKittrick, being northwest of McKittrick on the same anticline. I know the country along the contact there from McKittrick as far south as Sunset, along the eastern flank of that range. I located Midway land for E. J. Boust. I have noticed oil seepages along that contact going down to Sunset. I noticed it in two places; one I think was on section 26, that I located. I forget the township and range. It was called afterwards the Mount Diablo Oil Company. Along the contact between the McKittrick formation and the Temblor Range, running between McKittrick and Sunset, there is quite a lot [11] of what we called at that time Brea. We called it asphaltum. In its essence it is asphaltum. That would be about six miles from Sunset. Northwest of Sunset is where I made these locations

for myself. I located sections 24 and 26 for myself. The balance of the land I surveyed for Mr. Boust. Those locations were made upon the strength of the discoveries that I have spoken of. I know of further seepages in that country of my own knowledge. I found quite a lot of seeps outside of that. I found seeps west of McKittrick, north and northwest. I found oil croppings northwest of McKittrick, right through to Canary Springs, which is north and west of Temblor. To our locations, we called it six miles northwest of McKittrick. I know of seeps in 32-23 near the corner of 23, 24, 25 and 26, in the Midway. That is where I located. We found great blocks of asphaltum there. We lifted some of them up and there was oil on the under-side of them, seeping out. You could turn up a block of it and find the drips of oil. Of course, on the surface it was evaporated. I disclosed my discovery on the Elk Hills to a man named Charlie Lamont. He is one of them mentioned as my associates. I was surveying that ground for Boust and Lamont was working for me. When I went out with Lamont and located lands, our location covered the seep in Elk Hills. Our locations covered seven sections, if I remember right. I was there in 1874 where that seep was. The sand at that time was wet from oil. It would adhere to the hand when you would squeeze it together. There was a prominent smell of gas. We found other seeps north and west that we compared with it, with our instrument, and it would hit the Elk Hills. We supposed it was an anticline. That anticline was running parallel

with McKittrick and that would be southeast and northwest. When I went over this oil seep in 30-24, at the time I took Mr. Lamont over there and went in with my associates, the sand was dry. I regarded the Elk Hills at that time as oil territory. The formation was exactly like the balance of **[12]** the country that had oil in it. It was generally regarded in that country by competent oil men as oil land. I rode over these hills hundreds of times. I worked there, running cattle over them. Those hills have no value for crops. Early in the spring of the year, I suppose for about two or three months, the land has some value for grazing purposes. The nature of the soil there is phosphate, gypsum and Fuller's Earth. There is no possibility of water for irrigation purposes on those hills, unless you could get it by artesian wells. There is no surface indication of water. The surface of the country in the hills is badly broken, cut up pretty badly by small, short canyons. I never saw any Southern Pacific people in there in 1899, in the Elk Hills. I know a man by the name of Treadwell and one by the name of McWhorter. I never saw either one of them in the Elk Hills in 1899, but I saw them in McKittrick. In those days we called the Elk Hills the Buena Vista Hills. The group of hills which is shown on the map as the Elk Hills and the group of hills known as the Buena Vista Hills were in those days altogether called the Buena Vista Hills, without distinction. The oil seepages along the Temblor Range on the east flank which I discovered on the way down to Sunset, between McKittrick and

Sunset, I discovered in 1899; that is, as near as I can remember. The oil spring which we called the Bond Spring was known in that community there for floating oil. When I was working for Miller & Lux Company we would drive the horses up there and doctor them. We would wash their backs off with this sulphur water and then oil them and turn them out on the range and hold them there until their backs would heal up. We used the oil out of the springs, coming naturally from the ground. There were holes dug there. I first noticed those springs, to know that it was an oil spring, in 1874. Of course, we knew it was oil then, but we didn't know the value of it. **[13]**

CROSS-EXAMINATION OF
S. G. DROUILLARD

I was in Bakersfield in 1899 and in 1899 I was locating oil lands at Temblor, McKittrick, Midway and the Elk Hills. The location that I made in the Elk Hills—I do not recall the name of, but the people who were with me were Charlie Lamont, W. S. Wagy, J. E. Wagy, and Tom Baker, and others. I ran the instrument and surveyed the line. It was the outcrop of oil sand that caused us to locate thereon. I remember making a location on November 8, 1899, together with Mrs. Stella Packard, F. A. Tracy, J. J. Packard, Mrs. Annie Baker, T. A. Baker, C. W. Lamont. This location was made in the Elk Hills. It was between two and one-half and three miles in a southwesterly direction from Miller & Lux's Headquarters Ranch, Headquarters Ranch being where the present ranch house is now located, two or three

miles east of Button Willow, south and east. I do not know what township the location was in. I have forgotten the ranges and townships. I knew it at the time I made the location. I plotted the land as I located it, but I lost my plots and have forgotten the townships and ranges. There were two surveys on the land before we surveyed it. We found an old survey and a new survey; that is, the stakes showed that they had been there for a number of years, but whether or not it was a Government survey, I don't know. It did not look like it had been surveyed for over three or four years. Mr. Thomas Baker prepared the location notices. I saw them. We understood that it was unsurveyed land at that time. I do not remember whether the location specified that the land was unsurveyed land. I know that it was our understanding it was unsurveyed, although these surveys had been made on it, but whether it was Miller & Lux's survey or the Government's survey, we didn't know. The point on Government exhibit "I", marked "Miller & Lux Ranch", on the canal **[14]** is the one I referred to as the Headquarters Ranch. The location I made on November 8, 1899, is indicated by a point near where the red mark is above the "I" in red lines, in Section 32, Township 30 South, Range 24 East; also in 29, 30 and 31. We located in a group there. On the same day, November 8, 1899, I, together with my brother and T. J. Packard, Mrs. Annie Baker, F. A. Baker, C. W. Lamont, M. S. Wagy and Mrs. Stella Packard, located a claim known as the Pelican Oil Company No. 18, adjoining

the other claim located on this same day. We located them all in one group; it was in the same township. On the same day, I, together with my brother, Mrs. Annie Baker, F. A. Baker, C. W. Lamont, M. S. Wagy, Mrs. Stella Packard and T. A. Tracy, located a claim known as the Pelican Oil Company No. 21, adjoining onto these other claims, in the same township; and on November 9, 1899, in the same neighborhood, in the same general vicinity, we located Pelican Oil Company No. 24; and on the same day, in the same township, we located Pelican Oil Claim No. 27; and on the same day, with the same people generally, in the same township, or in the same neighborhood, we located Pelican Oil Company No. 28; and on November 28, 1899, with the same people generally, we located Wagy Oil Claim No. 2, right in the same vicinity. This last claim may have been situated in Section 21, Township 30 South, Range 24 East; and on the same day, with the same persons, we located Wagy Oil Claim No. 3. I could not say whether it was in the same section or not; I think it was. I think it was Section 21. When we were making all of these locations in the month of November, 1899, we supposed we were in Township 30 South, Range 23 East. I would not say what range it was now because I have forgotten; but at that time I knew the range and township we were in. Looking at Government Exhibit "I", I think it was on Section 32, Township 30 South, Range 24 East, that we first found the oil seep. I locate the point on this map where we found this oil seep by the position of the Miller & Lux Head- [15]

quarters Ranch, as I am very familiar with the country without reference to section lines. I know the country pretty well, as I first commenced to work there in 1874, riding over the range for Miller & Lux. At that time I saw no prospecting there. I worked in the vicinity of that range about four years. My work carried me all over everywhere. We were riding after cattle scattered all over the country. I had occasion to go into the Elk Hills, where we would do most of our work in the spring of the year, gathering cattle in off the Elk Hills. They grazed there in the spring, early. There were also some elk in there grazing, and there are some few elk there yet. About 1878 I left there and went into the northern part of the state; into Modoc County. I returned into that vicinity in 1893. Between 1893 and 1899 I went into the Elk Hills several times hunting. I went in there possibly once a year during that time. During that time I saw no one in there prospecting for oil. What induced me to go back into the Elk Hills in 1899 was I heard that they had found this oil seep there. I first saw that oil seep in 1874 when I was working there at the Headquarters Ranch. That is not the same one I referred to which we used for rubbing horses' backs. In 1874 I got down and looked at it and felt of it and there appeared to be a little oil or something in it—"gumbo" we called it in those days. It had a distinct odor. There seemed to be lots of gas in it; it smelled gas and sulphur. It was petroleum gas. I know what petroleum gas is. At that time the seep was wet. It would adhere to the hand and we

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would pick it up and ball it up and it would stick to your hand. We dug in it possibly four or five inches. There was no water there at that time. This was in the spring of 1874. I was at the seep once in a while afterwards while I was employed riding through the land and the seep remained in the same condition. The last time I saw it was in 1899, when I located it, at which time it was dry. We dug down about two feet into it. We found **[16]**—the gumbo—the sticky stuff—the same as I observed in 1874. It would adhere to the hand. I never had any tests made of it to determine whether or not it contained petroleum. I do not know if any test was ever made of it. In fact, after I located that land, I never went back on it any more. The only work we did on the lands was surveying them out. The other boys went back and done work on them afterwards. I don't know how much. I never had anything to do with the land after I located it. I located the ground in 1899 because I thought it would be oil land. I located it as a prospect. It looked as good as any other land that was in the country. The land I have testified to was generally regarded by competent oil men as oil territory in 1899. Every one that saw it said it was good oil land —people that were supposed to be oil men. The only man that was in the country at that time that was an oil man was Mr. Youle. I showed him some of the sand and he said it was oil sand. If we had anything to examine we took it to him, he being an oil man. My conclusion that the territory was generally regarded by competent oil men as oil territory is not based

upon the statement made to me by Mr. Youle from the sample of the sand that I gave him; we formed our ideas because it was the same formation as the whole entire country there was. It was gypsum, shale, sandstone and splotches of sulphur all over there, so we supposed it was good oil land. That is why we located it. There were several men there who pretended to be good oil men who pronounced it good oil territory. Wagy, my cousin, who is in the oil business a good deal, said it was good land. Lamont said it was good land, and Tom Baker and Packard claimed it was good land, and they were interested in it. I regarded it as good oil land, but it was withdrawn and we had to leave it and did nothing with it. I was in the oil business there from 1899 to 1904 or 1905, when I left. In 1899 the territory lying west of the place where we had our claims located in the Elk Hills **[17]** was generally regarded as oil territory by all the people that had located in there, amongst which number were Mr. John Jean and, I think, Mr. Treadwell and Mr. McWhorter. I remember hearing people, prior to 1904, state that the Elk Hills to west of the point where our claims were located was oil territory. There were quite a lot of claims taken in there, but I couldn't tell you who it was located them. Mr. Lamont and Mr. Wagy told me that it was all oil territory in plumb through there. That was before 1904 and after we made our locations in 1899. There were other parties who went out after I had located west of me. There was Mr. R. R. Wagy, J. R. Wagy and a company of them.

They located right adjoining onto us on the west. I think a man named Anderson was interested with them. To the best of my recollection, they abutted onto our land, the land I had located, to the west and south of us. I think they were in the same township. The continuation of the Elk Hills four, five or six miles to the west of our location was considered good oil territory by most everybody that talked about it. I have heard several speak of it as being good oil land, but I disremember who, as I can't remember so far back. I remember one man by the name of George Brown. He had a lot of locations in there in the Elk Hills, or the west end of them. He told me he had located some land or company in there and that he thought it was fine territory. This was over in the west end of the Elk Hills. I cannot tell you where he did locate; I never knew; but that he had located in that range some place. The Elk Hills were supposed to be in the oil belt and all of the ground that was in the oil belt was supposed to be oil land.

RE-DIRECT EXAMINATION OF S. G. DROUILLARD

I think we located seven sections in all, but how we located them I forget now. The anticline ran in a direction which would take it generally through the center of those hills. In [18] going from the seep in the eastern part to the other seep, you would go in a westerly direction. If we located four sections in township 30-24, the other sections of land were contiguous to the west of the locations and that would bring them into the next township. When I replied to Mr.

Lewers' question as to what townships we were in, I was not certain; I told him I had forgotten them. I remember the other three sections joined on the west of the four sections we first located, as we commenced here (indicating) at that seep and ran west from there. The order of withdrawal of the lands from disposition was a consideration for my leaving. Mr. Youle was considered an oil man. He had been working in the oil fields for a good many years. His headquarters at that time were at Sunset. He was superintendent for Jewett & Blodgett, or the Standard Asphalt Company. I regarded him as an oil expert. When I took those oil sands to him he was in Bakersfield. He told us it was a dry oil sand. He said it was a good indication. We thought the entire bunch of hills known as the Elk Hills good oil territory. All the people regarded the entire bunch of hills as good oil territory. 30 South, 23 East, is located in the middle of the Elk Hills and was regarded as good oil territory. That is the reason we located it. At the time I located those lands I knew the townships and ranges. There had been a survey made and it was sectionized and every corner marked, but we understood that it was unsurveyed land at that time and that is why I caused it to be surveyed. At the time I made the notices I knew of the land I was on as the land was marked, all surveyed out and sectionized, but whether it was a Government survey, we did not know, but we were of the opinion that it was unsurveyed land and we located it as such, but we got the townships and ranges all right.

RE-CROSS-EXAMINATION OF
S. G. DROUILLARD.

That oil seep was in Section 32 and I fixed that point [19] by its distance and direction from the Miller & Lux Headquarters Ranch. That is the only way I can now do it. It is hardly possible that that was away over there in Section 32 in the other township. I think we got our location all right. When I testified that I located one claim on November 8 or 9, 1899, in Section 21, that claim was between three and four miles from Miller & Lux's Headquarters Ranch. It was in a southwesterly direction. Our locations were all in one group, they were not scattered out at all, and if our location notices read Township 30 South, Range 23 East, it was intended to represent the location on Section 21. We made seven or eight locations, but they were all abutting each other. I disremember whether those locations were all in Section 21 or whether four were in 23. I think two were in Section 25. I do not remember whether we went further west than Section 21. Prior to December 12, 1904, the territory delineated in red hatched lines on exhibit "I" was considered as good territory. I testified that the west end of those hills where we located there, were considered good oil land. Six miles west of where I located was considered all oil land, the whole territory there; that is, we considered it was. We were not experts, but we considered it good oil land; that was the general supposition. I can't say that I ever heard any expert or competent oil man say so, but I had an idea myself that it was good oil

land. I knew by the general formation. I found the anticlines was on Section 5. It was north of McKittrick. There is an oil sand cropping there; that is in 30-22. I located this on the McKittrick Oil Company's land and we located that section in there and found an oil anticline. We supposed it was there so I put my instrument on and sighted both ways to catch the belt over here and catch it over there (showing) and I did catch it and I located land over there on it and land here on it. I found the anticline still west of Section 5 over in the Templor. It was indicated there by oil **[20]** cropping, asphaltum, oil sand. I observed stratification that led me to believe there was an anticline. That stratification was dipping to the south and running in a northwesterly and southeasterly direction. We supposed it was a parallel anticline to the McKittrick.

JOHN JEAN, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am a plumber and gas fitter by trade. I lived in Bakersfield in 1900; from October, 1899 to 1900. While I was living in Bakersfield, Charlie Lamont showed me some oil sands purporting to have been brought from the Elk Hills. He took me out where these oil sands were found. The point was between two and four miles from the Miller & Lux Ranch, in what was in those days called the Buena Vista Hills; I did not know their name at that time as the Elk Hills. They were a large group of hills running from Buena Vista Lake towards McKittrick, north of the

other group of hills at the foot of the lake. When I went over there with Lamont, I struck the oil sand. It was a black, coarse sand; dry oil. I think we struck about three feet of oil sand, three feet in depth. Approximately you could see a hundred feet in length and breadth at one point. It looked like dry oil, burnt sand. That was southwest from the Miller & Lux Headquarters Ranch on the canal. I don't know what township and range it was in. That was in 1899. I did not report that discovery in the Elk Hills exactly to the Southern Pacific Company, but to their representative, I suppose, who was Mr. L. G. Sarnow and J. B. Treadwell. To the best of my knowledge, Mr. Treadwell's position with the company was that of Chief Engineer, or oil geologist. I talked with him about his connection with the company. He said he was the head of the Oil Department of the Southern Pacific. [21] He was in charge at that time of oil developments at McKittrick. He had men in his employ digging wells and doing other things of that sort. Mr. L. G. Sarnow was an oil driller. I accompanied Mr. Sarnow and Mr. Treadwell out to these oil sands to show them to them. That was in 1899, I think. We went out there on horseback from the Miller & Lux Headquarters on the canal. Mr. Treadwell and Mr. Sarnow examined these oil sands at that place. Mr. Treadwell said it looked good. Mr. Sarnow said it looked good but that he thought it was deep territory and very expensive. On the strength of that discovery, I, with others, made locations of the lands about there. My associates were Mr. Sarnow and

Mr. Treadwell. Think we located on Section 31, near the oil seep. That would be, I think, in the section adjoining the section on which the oil sand was located. I think we located one section. We made no other locations. I have been over that country pretty well through the Elk Hills. The general formation of the surface is broken. It reminds me of an ash pit; you step on it and down in you go. As to vegetation, on the hills there is some sage brush, a little now and then. I do not remember noticing any feed for cattle there. Part of it might be susceptible of agricultural development and part of it was not. I guess grass would grow on all the hills. I don't know whether you could raise crops; I never saw it tried. The angle of the formation dipped to the northwest; I don't know how many degrees; I don't remember. I was in the employ part of the time of Mr. Sarnow and part of the time in the Water Company.

CROSS-EXAMINATION OF JOHN JEAN.

I think I was there in September. At that time of the year the hills are pretty brown, so far as grass is concerned. I don't remember ever being there in the spring of the year. I made those locations on Section 31 in 1899, I think. I did no work [22] on that claim. No work was done on the claim, to my knowledge. I never paid any assessment for work done on it. I never heard of any work being done on the location. I have never been there at any time since. Mr. Sarnow said that country gave indications of being very deep. I made inquiries and had knowledge at that time as to how deep wells could be sunk

with the appliances then in vogue. They could be sunk 1600 feet. There was no limit, I believe, as I understood it, to the depth of a well at that time. I never heard of any wells at that time being sunk to the depth of 5000 feet. I heard of a well being sunk to a depth exceeding 2500 feet. Mr. Youle told me about it. I never saw it. He told me where it was, but I forget now. He told me they went 3300 feet, I believe. That was regarded as an unusually deep well at that time. Mr. Sarnow said he thought this would be very expensive territory. It was looked upon as a possibility and for that reason I located it. At that time there had been some other oil developments in the surrounding country and a number of miles away at Sunset. I do not think there was anything said about making this location as a bare chance of holding the territory to be disposed of. I expected to drill, but made no preparations or inquiries with reference to drilling. I gave up my expectations on account of lack of finances. Mr. Treadwell was associated with me in the location of the land. So far as I know he gave up when I did and Mr. Sarnow also. After making the locations I never went back to the land. I never sold any interest in my claim and never tried to. I just gave it up.

REDIRECT EXAMINATION OF JOHN JEAN

When I was in the employ of Mr. Treadwell and Mr. Sarnow over in Bakersfield, I was paid by check; I think on the Bank of Bakersfield. Mr. Sarnow would sign the checks. Mr. Treadwell **[23]** came out where I was working under Mr. Sarnow and he lived

there. That was in the course of his business. The Elk Hills at the time I found the seep over there and for the ensuing period of time up to 1904, I wouldn't say were good oil territory, but it was regarded as oil territory. I regarded it as such or I would not have made locations.

RE-CROSS EXAMINATION OF JOHN JEAN

I really, seriously regarded it as oil territory. The reason I did not hold on to my locations was because I did not have money enough. I never did any work on my locations. I had no money to do any work. I made attempts to borrow the money to do the work on it and I tried to interest someone in the location, but did not succeed, even though it was a promising oil location. It was not possible to get people interested in the oil business. They did not regard it as favorably as I did. I know something about the territory lying west of where I made my location as far as Asphalto. I don't know whether there was any asphaltum immediately to the west of my location, except up around Asphalto and up around Midway and Sunset. Going directly west from Section 31, a distance of six miles, there is no asphaltum that I know of. That would bring you up to McKittrick. I never made any locations in there. I don't remember anyone or anybody else making any locations immediately to the west of ours. I heard people discuss the territory lying just to the west of our location between the Elk Hills and Asphalto. Beginning just to the west of our location in Section 31, Township 30 South,

Range 24, and extending over a distance of six miles to the west, I heard W. E. Youle speak of that territory. He told me it ran from Buena Vista Lake to Sunset, Asphalto to the Buena Vista Hills. He told me that he was drilling in Sunset, and I asked him why he did not go into the flat, and he says: "We don't want light oil and if we go there we will get it. **[24]** We want asphaltum." I am referring to the flat northwest of Sunset. It runs clear over to the Elk Hills, "Buena Vista Hills," we called them. Mr. Youle never used the word "anticline." He said light oil runs there. I don't know about the township and range by 30 South, 23 East, but he told me it run from hill to hill. Specifically, he said it ran from Sunset to McKittrick and from Sunset up into the Elk Hills. He told me from the lake clear through to the hills, from hill to hill. He told me about the oil sand after I had seen it. He told me before I had ever seen or heard of the Elk Hills oil sand; this was in 1896. He told me of indications of oil other than those so-called oil sands, but not in the Elk Hills. He never told me about the Elk Hills, but just said it run from hill to hill, and he says: "We are after asphaltum and not oil." He did tell me if you go into the Elk Hills you will find oil anywhere north of the line between Sunset and McKittrick. I don't remember that he told me oil had been discovered or was known to exist anywhere north of that line.

RE-DIRECT EXAMINATION OF JOHN JEAN

Mr. Youle said that from Buena Vista Lake through the hills to the other hills where McKittrick

is, and from Sunset north to McKittrick through that flat, there was oil. We drilled in Sunset; and while we were drilling there and every time we would go down the hill towards the flat, we would get light oil, and we abandoned those and came up the hill. Then, when we could not get much asphalt in Sunset, we moved over to Asphalto and done the same thing there. We would drop down the hills and then back up again. Mr. Youle told me this, to the best of my recollection, in 1896.

LUDOLPH G. SARNOW, a witness called and sworn on behalf of the plaintiff, testified as follows: **[25]**

DIRECT EXAMINATION

I live in Los Angeles and am the same L. G. Sarnow referred to by Mr. John Jean. I was at one time employed by the Southern Pacific Railroad. I had charge of the McKittrick; and then I moved up to Kern River and had charge of the field there. I had charge of the field, and was drilling by contract also, on the side. I was in charge of the field. I had about seven years' experience in the oil business before that time. I had drilled some wells in Summerland, California, and in this field and Half Moon Bay and the first wells in McKittrick, I believe that we drilled the second well in the Kern River field. It was a producer. I believe we got the first oil in McKittrick, although we didn't perforate the casing. We plugged the well. I am very well acquainted with J. B. Treadwell, mentioned by Mr. Jean. He had charge of the oil division of the Southern Pacific.

He was a competent oil man. He hired me at Summerland. I was drilling there. We shipped up two drilling rigs and a carload of casing at that time. He ordered a lot of lumber shipped up from Summerland to McKittrick. There were not any houses there then. We landed in McKittrick, I believe, on the 12th day of May, 1899. The Southern Pacific Company brought the freight free of charge and we went to work in the McKittrick field and we drilled two wells on the hill and then went to the north end and drilled a well there and then I went to the Kern River field to my brother. My brother went with me from Summerland to McKittrick. He is a practical oil driller and oil man. Mr. Jean was hired by me and sometimes he worked for me on the rigs and sometimes he worked in the field. He was acquainted with Mr. Treadwell and it was through Mr. Tread well, I believe, that I got acquainted with Mr. Jean. While I was working for Mr. Treadwell, operating in Kern County, I believe I drilled thirty wells in the Kern field and three in the McKittrick field. The formation of the Elk Hills is shale, gypsum, and sand. It is substantially the same formation **[26]** over in the eastern flank of the Temblor Range. I have been in the Elk Hills and have located some claims there. The reason I located claims there was because Mr. Jean showed me some sand and I wanted to know where it came from and he told me it came from near Miller & Lux's Headquarters Ranch. It was a coarse pebble oil sand and I was interested in it when he showed it to me. It looked good. Mr. Treadwell saw

it and we arranged to go the next morning. I believe Mr. Jean showed it to me in the afternoon and I met Mr. Treadwell and we arranged to go the next morning, and we took a gasoline motor to come back on. We went out to the point that he showed us in the hills where he got the sand. First we went to the Headquarters and stayed there that night and then in the morning we drove over in the hills. I cannot remember just what section, township and range it was in. I don't know. It was about in a southwest direction from the Miller & Lux Headquarters. I would think it was about a twelve mile ride that day over and back. That would make it about six miles over. I think it was the same oil sand that Mr. Jean referred to in his testimony. I don't know of any other. Apparently it was a blow-out. There was an anticline that came to the surface in a way. It was just the same as you would find in Temblor. They are just similar, I believe, in a mining way, to what they called a "chimney," or something that way; a sort of a blow-out. That was what we called it. I thought it was deep. By deep I would mean somewhere between sixteen hundred or fifteen hundred to two thousand feet, or probably somewhere in that neighborhood. That was my idea of it. I thought it was good for oil, but I don't want to be held up as an expert on oil. That is just an opinion as a man. Mr. J. B. Treadwell was with me. He is a minerologist. He thought it was good for oil, but he had the same idea that I did, that it was deep. On the strength of that showing, Mr. Treadwell and Mr. Jean and I lo-

cated the land. With reference to that oil sand, we did [27] not locate just on the sand. I remember the sand was on one side of it and we seemed to figure that it came from the McKittrick or Temblor and we took the land that we thought to be in the strike; just which way it dipped from there, I don't remember. We located quite a number of claims. I don't remember how many. We had a great many names; I believe sixteen located with us. We located more than one section, but I don't remember how many acres there was in the claim, but it seems to me that we made four or five different claims, but I am not sure as to the number. I don't know whether Mr. Treadwell reported to the Southern Pacific Company of the mineral discovery there. He was looking after their oil claims at that time. Whenever Mr. Treadwell found anything that looked like oil, he had small maps, a little stack of them, which had all the townships and ranges printed on them, and if he found any oil he would take one of those maps and paint in on the little map and then file that and put it on a stack, and he had a big map and he would mark it on this big map, that is, the oil indications. Where there was a gypsum deposit, he would mark it with one color, or oil blow-out or this sand in another color, and asphaltum in some other color. I don't know anything about Mr. Treadwell's agreement with the Southern Pacific Company, but my understanding of the thing—

Mr. Lewers: I object to any testimony as to the witness' understanding; not responsive.

A. Well, I would not be able to—

Q. By Mr. Mills: Go on with your answer.

A. My understanding was that he was employed by the Southern Pacific, and that anything that he would locate or acquire in any way would belong to the Southern Pacific. Just how I got that I don't know; but Mr. Treadwell and me used to sleep together in the same room.

Q. Well, I can easily understand how you might get it by percolation [28]

A. And I don't know just how. But that was my idea of it or understanding of it.

Q. Did the Southern Pacific Company establish any credits in the bank at Bakersfield or other banks for Mr. Treadwell to deal in oil lands on?

A. Well, not that I know exactly for what. He would get a letter saying that "There has been $15,000 deposited—"

Mr. Lewers: To which we object, on the ground it is calling for secondary evidence, and not the best evidence. If there are any letters, we ask that they be produced.

Q. By Mr. Mills: Those letters are not in your possession, are they?

A. O, no; but I have seen them.

Q. Go on and tell what you saw in the letters.

Mr. Lewers: We renew our objection. It don't remove the lack of foundation that they are not in the possession of a particular witness. It is not the best evidence.

A. He showed me a letter where the Southern

Pacific had deposited $15,000 to his credit, five thousand in one bank, and I believe in the Wells Fargo bank.

Q. By Mr. Mills: What city?

A. San Francisco. And another in some other bank, and five thousand in the First National down here.

Q. In Los Angeles?

A. In Los Angeles. Two, five thousand each, was in San Francisco, and one five thousand was here. And he would make up his expense account and check against that.

Q. Do you know whether his employers had confidence in his judgment as to oil lands?

A. Why, yes sir; I think they did. I met Mr. Kruttschnitt and Mr. Huntington down in the oil fields, and they undoubtedly, from the way they spoke, had great confidence in his **[29]** opinion.

Q. Who was Mr. Kruttschnitt?

A. I don't know just—He was the head of the Southern Pacific.

Q. Was he at that time vice president or president of the Southern Pacific Railroad Company?

A. It seems to me Mr. Huntington was president at that time, and I don't know just what office he held now, I don't remember.

Q. Were they officials connected with the Southern Pacific Railroad Company?

A. They were officials of the Southern Pacific Railroad Company and they would come down and inspect the field.

Q. They would come in around McKittrick and in this field generally?

A. Oh, yes; Kern field and McKittrick. Mr. Kruttschnitt would go around with me a great deal. When he come he would always leave the bunch and ask me to go around and show him everything.

Q. Where have you taken him?

A. Oh, in that field only. Right on Section 3—He would never go off the section—in Kern field.

Q. He was down there looking into the—

A. Looking at the wells and the oil.

Q. What year was that that Huntington and Kruttschnitt were down there?

A. I would say that was in the early part of 1900. Just what months, I don't remember.

Q. You were in there in 1904, were you?

A. No.

Q. What year did you leave the McKittrick field?

A. I believe I left some time during September, 1899. **[30]**

Q. Now, prior to that time, at any period—immediately prior to that time—with the knowledge of the formation of the Elk Hills, its comparison and similarity to the general McKittrick formation along the eastern flank of the Temblor Range, the development of oil sands by actual drilling along the Temblor flank from Sunset to McKittrick, the oil seep that you have mentioned in the Elk Hills, and such other evidences as were plainly conspicuous, upon the ground, of oil character, will you state whether a competent geologist, in your opinion, would have recommended

the investment of money in the Elk Hills with the reasonable expectation of developing paying oil property?

MR. LEWERS: To which we object, on the ground that no foundation has been laid; second, that the question is based upon a hypothesis which is not supported by the evidence already introduced; and, third, on the ground that it is calling for the conclusion of the witness as to what somebody else would conclude from indications and not upon the opinion of this witness who has already testified that he is not an oil expert or competent geologist; and, fourth, upon the ground that it is calling for an illegal test as to the character of mineral land, in that it does not call for a determination of whether or not the land in controversy or in question is land containing mineral in sufficient quantity to warrant its extraction to an economic profit. And we object, in addition thereto, upon the further ground that it has not been shown in evidence, and is not a fact, that petroleum is a mineral, first, within the meaning of the Act of Congress granting the land to the railroad that is not involved in this suit, and, second, that it is not a mineral within the Act of Congress or within any recognized or established meaning.

A. Yes sir.

Q. By Mr. Mills: Did you notice—

A. Let me ask you one question there. "Prior to that time." Prior to what time did you mean? [31]

Q. Prior to the time you left there.

A. Oh; yes sir.

Q. Any time before you left there?

A. Yes sir.

CROSS EXAMINATION OF LUDOLPH G. SARNOW.

I don't remember of any competent geologist who recommended the Elk Hills as a place that would be worth prospecting for oil. I base my answer that a competent geologist would so recommend because I thought so. That was only my opinion of what he might say. I never took Mr. Kruttschnitt into any portion of the Elk Hills. I never left Section 3 with him in the Kern field. That is about twenty-five or thirty miles, as the crow flies, from the Elk Hills. I never examined the territory lying immediately west of our location and I had no personal knowledge of it as I had never been in the hills in that neighborhood west of our location. I had never heard of it being considered as proven oil territory, but so far as I heard it was considered as promising oil territory. It looked good here. I am basing my conclusion upon the blow-out down near Section 31 and not upon anything else. There were three traces of blow-outs off a little further to the west, but not as prominent as these others. They might have been in Section 30 to the north. I would not say, although it was right next to where we located. That is as near as I can get to it. I never had any tests made of that material. I didn't need any. I didn't think so. That was oil. I don't think it was possible that I was mistaken as to that containing oil, although I wouldn't say it is not possible. I have never known of similar blow-

outs being tested by chloroform tests and showing nothing. It might be so, but I have never seen any. I did no [32] work on that location an I never re-located it. I abandoned it. Oil went down to nothing. It was not worth anything. It sold in the Kern field for seven cents a barrel and there was not money enough in it to drill for it. I had no oil in Section 31 where the blow-out was. I based my judgment of the depth of probable oil discovery from the looks of the field. I had an idea that the depth was from fifteen hundred to two thousand feet, but it might have been deeper. Possibly not so deep, but I don't know. That was just an opinion. It is possible that a blow-out of that character wouldn't show any oil down below it at all. I don't know anything about the Pennsylvania fields. I never was there. But it was a cinch where this blow-out comes from that there was oil there. Without any test, I don't hesitate to say that. Even if samples taken from this particular blow-out show that there was absolutely no oil in it, I would gamble ten to one it was oil even though anyone said it was not. If tests were made by competent and disinterested persons according to the best approved methods, showed absolutely no oil, I would still say that it was a cinch that there was, because I seen the sand. I happened to see this particular sand. Mr. Treadwell did not re-locate this land, as oil was not worth anything. He was employed by the Southern Pacific Company during all the time that I was with him and a long time after that. I don't know whether it was the Southern Pa-

cific Railroad Company or the Southern Pacific Company. I rode on passes. I would telephone to Mr. Burkhalter and give him the name of any man I wished to pass to any place and return, or for myself or anyone else, and the pass was issued, but I don't know whether they were furnished by the Southern Pacific Company or the Southern Pacific Railroad Company, and I received vouchers from them for thousands of dollars at a time but I don't know from which company. Mr. Kruttschnitt was at the head of the whole Southern Pacific Department, but just what office he held I don't [33] remember. I have no definite certain knowledge as to what position Mr. Huntington and Mr. Kruttschnitt held or just what company they represented. It was my understanding that whatever Mr. Treadwell located was located for the benefit of the Southern Pacific Company. I never saw any correspondence between Mr. Treadwell and any officer of the Southern Pacific Company to that effect, and that was a general understanding that I reached through my associations with Mr. Treadwell and in no other way, and it is not based upon any exact knowledge. It is merely suppositions that I formed. I don't know just how I got that but that was my opinion of it. That was the impression I had. Referring to the letter to Mr. Treadwell concerning the deposits of money in certain banks, I don't remember by whom that letter was signed. I saw the letter itself. It was on a yellow piece of paper. I made no report directly to any person other than Mr. Treadwell. I took orders from him and him

only. From 1899 to 1904, the general impression amongst oil men was that wells could be sunk from twelve to fourteen hundred feet in depth. There was a well in Pico canyon above Ventura which I believe was 2600 or 2700 feet deep. The general impression was that with the appliances then existing anything beyond 1200 to 1400 feet was looked upon as economically impracticable. A 4,000 foot well would have cost a fortune in casing alone at that time and would have been regarded as prohibitive. If a competent geologist had told me at any time up to 1904 that oil could be developed in the Elk Hills at a depth of 4,000 feet, and if I had had the capital behind me to sink a well for oil there, I would not have done so because it would have cost too much. Even if he had told me it could have been developed at a depth of 3,000 feet, I do not think I would have touched it. I might have gone to 2,000 but no further. If he had told me that there was indications on the surface that showed a possibility of oil below which might not be great in quantity and would exist at [34] a depth of over 3,000 feet, I would not have looked upon it as a good business proposition to drill. At that time we were not looking for gushers and did not think there were any. A well might "blow its head off" for a couple of hours and then be a pumping well, and a pumping well would not be profitable at 4,000 feet. Even today I do not think a pumping well that produced no more than fifty barrels a day at a depth of 3,500 or 4,000 feet would pay, and I would not consider a territory containing such wells as a promising oil territory.

REDIRECT EXAMINATION

LUDOLPH G. SARNOW

I paid all the men, every man that was drawing pay in the field, with a voucher and order on myself as against Treadwell; and the Southern Pacific and the Bank of Bakersfield, or any other man anywhere in that country, cashed it. Passes were issued to me over the Southern Pacific lines. Mr. Burkhalter, that I spoke of, who issued the passes at my request, was Division Superintendent at Bakersfield of the Southern Pacific Railroad. **[35]**

F. D. LOWE, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I reside near Bakersfield. I am a rancher. I am familiar with the portion of the country that is known as the Elk Hills, in Kern County—a portion on the east end. I first visited that locality in the latter part of 1900 for the purpose of making some mineral locations,—I mean oil locations. At that time there was an oil boom or oil excitement on in that vicinity. Some friends induced me to go with them and join them in making some oil locations. I heard of the discovery of oil evidences in the Elk Hills at that time. That was prior to my going there. I never was to the place, but it was spoken of to me as a blow-out, I believe. It was southwest from Miller's old headquarters. I heard various people speak of this blow-out, but not to any great extent. We kept on the east portion of the Elk Hills in Township 31 South, Range 24 East. I went in there in the latter part of 1900.

Mr. J. A. Boehn, C. A. Cochran, Chad Lewis and Mr. D. B. Hoy went with me. We looked carefully over the land to see if we could find anything on the surface that indicated an outcropping of oil sand. Our purpose in endeavoring to find such evidence was to make locations. We did find evidence. The first place that I made note of it was about three hundred yards due north of the northeast corner of Section 11, 31-24. That was in 1900. We found what appeared to us to look like oil sand in a gulch. We found another place similar to that at the center of Section 2 and exactly half a mile east of that point on the section line. Section 2 is in the same township. We found a third indication half a mile east of **[36]** the section line of Section 2. There we found practically the same thing. These oil sands showed stains and looked as though they were very much dried. It had become very much dried. We afterwards made locations. This was on the morning of the first of January, 1901. We located ten (10) Sections. I don't believe that I can name them by number at the present time, but I can locate them on the map. We afterwards did development work in connection with these locations. We incorporated into a company and levied an assessment and erected an eighty-foot derrick and made a contract with a party to begin drilling. The derrick was erected on the northeast corner of Section 11, Township 31 South, Range 24 East. That was near where we made the first discovery that I told about. The reason we were induced to locate the derrick there was because it was right

at the corner of a section and it was on a natural roadway going through those hills. It was also an ideal place to locate a well, being right at the corner of four sections and if we struck oil there we could easily locate another rig and another derrick and use our same engine. We got down about five hundred and sixty feet and struck small showing of oil and at various times we got gas. We piped the gas, but made no use of it particularly any more than to use it for cooking, which we did, and we piped it to the stove and cooked with it. The character of the ground or earth formation through which we drilled the five hundred and sixty feet was a sort of what we call "gumbo." It was so difficult that we could not make more than two feet a day progress. It would not mix with the water. The formation was a deep blue. It was identically like I had seen in the Kern River field just before they struck oil. I have seen a great many wells in the Kern River field and the character and formation and **[37]** condition of the soil just before encountering the oil. These wells in the Kern River Fields were paying wells, good wells, and I found the same character of formation in the five hundred and sixty foot well that we drilled out there on Section 11 as in the Kern River Fields. Subsequently we plowed a furrow on the section lines of our locations. In that way we marked them out. We made a road coming from Miller's headquarters. That was the most direct to the ranch. That was while we were drilling. We stopped drilling at five hundred and sixty feet because there was such a general depres-

sion and oil got to be a drug on the market that we couldn't see our way clear to continuing the work. Besides that, the driller was financially embarrassed and we concluded to suspend operations for the time being. We were not rich men. Quite a number of people came out to see us drill. I am familiar with the Barlow and Hill map introduced in evidence yesterday. I have looked it over a good deal. While we were operating there, I met Mr. Barlow in Bakersfield and he called me into his office and he showed me a map which showed our ten sections located by us and our well. The name of our company was the Western Union Oil & Development Company. After we reached a depth of five hundred and sixty feet we were very much financially embarrassed and during the close of the year 1901 we tried to induce further development work in some way by making a contract, but we failed utterly, so we were never able after that to continue the work. We let the locations go by default. They were re-located in 1902. I was one of the locators. It was on the strength of the evidence of oil that I had seen there previously and the drilling of this well that we re-located the land.

Q. Do you know what the general talk and opinion in [38] that vicinity or among oil men at that time was,—that is, in 1900, when you were there, and 1901 and 1902, with respect to whether or not the Elk Hills in general, including the portion of the country that you say you located, and that to the north and west thereof, with reference to whether or not it was good oil property?

Mr. Lewers. To which we object on the ground that it is calling for testimony as to the general impression and is not calling for testimony as to the knowledge of actual existing conditions in the territory. On the further ground that the question is vague and indefinite, in that it does not call for actual knowledge of the existence of minerals in paying quantities, but simply calls for speculation as to what might be in the ground.

A. Yes sir: I talked with people that were in a position in which their opinion was worth something, in my estimation, and they believed there was oil there. Others said, among them C. A. Barlow, "I don't doubt it."

Mr. Lewers. I move that the answer be stricken out on the ground that it is hearsay testimony and not responsive to the question.

Q. By Mr. McCormick. You say they said it was oil land?

A. Yes sir.

Q. What do you mean by that?

A. Well, that there was oil down below the surface if we could just go down after it.

Q. To what extent?

A. Well, they believed it was in paying quantities.

Q. Now, was that fact generally conceded among men interested in the commercial production of oil and in the oil business at that time? [39]

Mr. Lewers. To which we object on the ground that there is no foundation laid that the witness

knows what was generally conceded among such men, and that it is calling for a conclusion. And we desire the former objection to apply to this also.

A. Yes sir.

No prospectus was ever gotten out by our company, but the Lake View Oil Company got out a prospectus and in it they mentioned our company operating and that there was every indication of our striking oil. That prospectus was published about the middle of the summer of 1901, when we were down about five hundred feet. I have been down in the Sunset Fields and looked over them a number of times and the country where we located compared favorably with it. By favorably I mean from the outcroppings and from what I heard further on about there being blow-outs and the lay of the country and the general contour and so forth, I believed myself that there was oil there and was willing to take my chances on it. I am speaking with reference to the country covered by our locations in the Elk Hills.

CROSS EXAMINATION OF F. D. LOWE.

Our well was sunk on Section 11, Township 31 South, Range 24 East. At a little deeper than five hundred feet we encountered the oil. The total depth was five hundred and sixty feet. When the bit would come up, little drips of oil would break and run down in a little streak. I am certain that it was oil. The only test I made was I put my finger on it and smelled it and I looked at it and I ran my finger through it. I didn't take it anywhere to have it examined. No attempt was ever made to pump oil from that well and

we quit because of [40] depression in the price of oil and financial difficulties. We never sunk any wells on the remaining nine sections. All we did was to run a furrow around the sections and make a roadway to the property. We did not see any oil indications in those furrows and that road, but there was plenty of gypsum on the land. We made no use of it. We were not interested in that material and passed it by without any further thought of doing anything with it. We were after oil. We quit drilling approximately in the latter part of 1901. The depression in the price of oil continued for a long time after we lost our possession and I lost my interest. The depression lasted, I think, a couple of years. I don't know what the price of oil was in 1904. Nothing occurred from the time I made my location on Section 11 up to the fall of 1904 to change my opinion of that territory as oil property. I still held to my opinion that there was oil there and I still believed it was good oil country. In 1902 I was at home near Bakersfield, about twenty miles from the Elk Hills. In 1903 I was in the same place and have been there ever since. I was on the land several times in 1902, but didn't go back there in 1903 or 1904. There was nothing to prevent my going back there in 1903 and 1904, but I still retained my opinion of the land held prior to that time. I was one of the parties that helped to re-locate the land in 1902, and although the depression in oil began to be removed some time in 1903 or 1904, I didn't go back, but still retained the same opinion of the character of the land as oil territory. As a matter of fact, I

had a very high opinion of that land as oil territory. Nevertheless I allowed the land to lapse and never went back there. At the time I was in there, the opinion of oil men of this land was good. Their opinion was that there was oil underneath the surface. How far I cannot say, as there were no estimates given. Mr. C. A. Barlow told me he didn't **[41]** doubt but that it was good oil land. He didn't say that he had made any investigations to determine the depth of it. He did not describe to me the location or position or trend of any anticline in that territory. I talked with the McCutchens about the character of that land in 1901, 1902, and 1903. The McCutchens are drillers and operators there in the Sunset Fields. I talked with Edward McCutchen. I know he had been on this ground. It was while we had possession of it and were operating. He said his opinion of the land was it was good and that he believed there was oil there. He did not state how deep he thought it was. No one ever expressed an opinion to me as to the probable depth of that oil. I made no inquiry as to the depth that oil wells could be drilled at that time with the appliances then available; nothing more than that we had read and had information that wells were beng drilled several thousand feet. They went down two thousand and even three thousand feet in the Sunset Field towards McKittrick. The reason we went back to re-locate in 1902 was because we had a good enough showing there and had spent considerable money on it and I didn't feel like losing my interest. We had done enough work in 1901 to hold it

for the time being, I guess. At the time we quit drilling we figured that we were right close to oil and liable to strike it at any foot on account of the formation and the gas we had and the drips that came up on the bit. I don't know whether that was petroleum gas or marsh gas. We never had a test made of it, only I know that it would burn very nicely. I never tried to burn marsh gas. I took samples of the blue clay to Bakersfield and showed it to a number of people. I think I showed it to Mr. Barlow and another oil man named Mr. Day, and he said it looked great. There were no tests made to determine its character. I don't know what the constituents of this blue clay were. [42]

REDIRECT EXAMINATION OF F. D. LOWE.

When we were down about five hundred feet we struck gas and we lit a paper and dropped it in the casing and when it reached down a few feet there was a terrific explosion.

IRA M. ANDERSON, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am fifty-two years old and was born in Westmoreland County, Pennsylvania. I am in the hotel business, the garage business and the oil business. I reside in McKittrick, Kern County, California. I came to McKittrick in 1901. The first time I was there was in 1900. I have had experience in the exploration and development of the country for oil and in the operation of oil wells and the development and production of oil. I have drilled all over the country;

in three or four different states. I had charge of property in a number of places. I drilled in Pennsylvania, I drilled in Kentucky, West Virginia, Texas, and California. I have had charge of a number of different properties, looking after different properties; that was in Indiana and Texas. I have drilled in this State. I have been in the oil business ever since I was fifteen or sixteen years of age. I was raised in the oil country. I first went to Kern County in 1899, to Bakersfield. I came from Texas. When I first went to Bakersfield I was loking over the oil fields. I visited the Kern River Field and the Sunset Field and the McKittrick Field. I made investigation and examination of the country as an oil country, with a view to satisfying myself as to its future possibilities as a country in which oil could be produced [43] economically so as to make it a success commercially. The Sunset, McKittrick, and what has since become the Midway Fields are all about the same. There is not much difference in them. I examined them and investigated them. I discovered indications on the surface of the ground that showed that it was an oil country at that time. I discovered some of those evidences between Sunset and McKittrick. I found oil sands all through there and oil seeping out of the ground and gypsum all through that country. Where you find gypsum you will find oil. I found that in Sunset. At that time they were producing oil in Sunset and McKittrick. Between McKittrick and Sunset the formation was about the same. There were these blow-outs through there,

asphalt and oil, and places where you could see what was asphalt around there and gas coming through the center of them. That condition extended generally from McKittrick to Sunset. From my knowledge and experience in oil, it indicated to me that it looked like a good country to get into and invest in. My investigations and explorations extended to the west over into the Elk Hills and Buena Vista Hills to the east. I examined that country. I found shale in there and gypsum and oil sand. I can describe places in the vicinity of McKittrick where I found extraordinary evidences indicating the country to be an oil country, speaking about 1899 and 1900. That was down at Asphalto. That was the name of the station. Then there were indications on Section 34, Township 30 South, Range 22 East. (Witness looks at Plaintiff's exhibit "I" and identifies the place where he made the discovery on Section 34, Township 30 South, Range 22 East.) I found asphalt, oil sand and gas. In the summer when I was through there the sun would melt the asphalt and it raised up and in the center of it there would be gas coming up and if you lit it it would come up like a candle. This asphalt covered over there for probably an acre. These conditions were known in general to **[44]** the populace around there at that time. It was a matter of common notoriety. In 1899 and 1900 we went to Section 2, the section that cornered on Section 34, Section 2 being in Township 31 South, Range 22 East. I found asphalt in there and oil sand, just the same as in Section 34. It runs the whole way through there in different sec-

tions. When I was in there there were no Elk Hills. We did not call them Elk Hills. They were the Buena Vista Hills. The next place we ran onto it was over in back of the headquarters over in the hills there. I mean Miller & Lux's. I have been along through that ranch from Sunset clear through to the coast and found the indications all the way through there, all the way from McKittrick to Sunset. I have made examinations of the country designated on exhibit "I" as the Buena Vista Hills and I found shale in there and oil sands. I found about the same general conditions as I have designated on Sections 34 and 2. I know where the Elk Hills are. I went through them at that time. I found a shale in there, a brown shale, a clay that lay on top of the sand. I found brea there in the fields, in the Elk Hills. I made chloroform tests of the earth and rock and shale that we found in the Elk Hills. The tests showed oil and oil sand. As to my opinion as to whether or not the Elk Hills was oil producing territory, the formation was there to show that it was. The shale is there, the clay is there and the oil sand is there. I found blow-outs in the Elk Hills. There was a place across from Miller & Lux's headquarters where the gas blew out. This blow-out was eight or nine miles south and west from the headquarters. It was on the east side of the summit line of the Elk Hills, pretty near the top of the line or ridge of those hills. I drilled for Fred Sarnow in three different places on the hill right above McKittrick in Section 29 and we drilled about two miles north of McKittrick; I think it was on

Section 19, and then on Section 6. Sections 19 and 6, I think, were in Township 30 South, Range 21 [45] East, and Section 29 was in Township 30-22. I knew J. B. Treadwell while I was employed as a driller. At that time I understood he was there with the S. P. The S. P. at that time were in there hauling out oil. I don't know what else they were doing. I heard of the S. P. lease in that country at that time. That lease was on Section 29, Township 30 South, Range 22 East. That is the Section 29 that I worked on. I worked on the S. P. lease. I am positive about that description. I was paid by Sarnow by check. While I was working there I lost a finger. I went to a hospital in San Francisco; Southern Pacific Hospital. In going to San Francisco I took the Southern Pacific from McKittrick to Bakersfield and from Bakersfield to San Francisco. I didn't pay any fare. I had a pass. I got the pass, I believe, from Sarnow. I know Mr. Burkhalter. I think that at that time he was Roadmaster of the Southern Pacific Company. I mean the company operating the railroad between McKittrick and Bakersfield to San Francisco. It didn't cost me anything for physician's fees or services or hospital attendance while I was in the hospital in San Francisco. I don't know how it was paid. I paid hospital fees while I was working at these places on this lease in McKittrick. I paid fifty cents a month, which was taken out of my salary. In case of accident or sickness it was to pay hospital and doctor's and medical expenses if I was injured or taken sick while working there. It was

taken from my salary each month. That was true of the other men also that worked on those oil wells. I worked on and off there two or three different times. I couldn't say just how long; not very long at any one time. I started to work in that employment along in 1900. I worked off and on for Sarnow for two years, I guess, or a year and a half, probably. I don't remember whether this fifty cents a month was taken from my wages during the entire time I was working for Sarnow. At the time I took this trip to San Francisco to the hospital, Sarnow **[46]** was over there at the time. I was in the hospital longer than a month. There were other patients in the hospital at that time; most all people who were working for the Southern Pacific Railroad. There were trainmen and oil men and people working in the field. I went back to McKittrick when I recovered. I didn't pay any fare. I got a pass to go back on the same line to Bakersfield and then to McKittrick. I went to McKittrick at that time. Before I went to McKittrick I went to see Mr. Burkhalter and he gave me a pass to McKittrick. I saw him at the Southern Pacific Depot. I knew Mr. J. B. Treadwell. I met him a number of times. He was in that vicinity off and on a number of times,—while I worked in and around McKittrick as I have testified. I know of his locating oil land while I was there. He located it right north of McKittrick. I couldn't say about how much he located. I don't know whether he located alone or not. He located the strip that runs from McKittrick to the North-End Field. He located it for min-

eral, oil and asphalt. The property on which I was working at the time I had the accident to my finger was commonly known in that vicinity as the Southern Pacific Lease. At that time the old camp was right in the town of McKittrick. The well was right at the hill above the old town site. The well was about a quarter of a mile from the town. I know Mr. Henry M. Thompson. At the time I worked on the Southern Pacific lease he was connected with the operations of the same, I believe he was bookkeeper. I know Mr. E. T. Dumble, the geologist. I saw him in that vicinity in 1902. I saw him prior to 1902. I know Mr. Josiah Owen, the geologist. I have seen him in that vicinity. It was along about 1902 or 1903. While those two men were there, they stopped on the Southern Pacific lease up at the north end. That was about two miles from where I worked. I have seen these two men there together. They were driving around over the country. They were mineralogists. [47]

Q. Do you know for whom they were working as mineralogists or by whom they were employed as such?

A. I do not.

Q. Did you ever hear that spoken of?

Mr. Lewers. Objected to as calling for hearsay testimony and not the best evidence.

A. I have.

Q. By Mr. McCormick. What did you hear about it?

A. That they were S. P. mineralogists.

Q. When you use the term "S. P.," what do you mean?

A. The S. P. Railroad.

Q. The Southern Pacific Railroad?

A. The Southern Pacific Railroad. Wherever S. P. appears in my testimony it means Southern Pacific Railroad. These two men, Dumble and Owen, drove around over the country in a rig that belonged to the S. P. They were driven around by a man who we called "Old Dad." He was employed by the S. P. at the time he was driving these men around over the country. They drove all over the country. I can't say that I ever saw them driving towards the Elk Hills. I was present when these two men found shells around there. I think it was along in the spring of 1903. It was out on the lease where I was working for the U. S. Oil Company on Section 6, Township 30 South, Range 21 East. Mr. F. J. Sarnow was my boss at that time. They found the shells in the oil stains in that section. They were over there and we had an argument about what oil originated from and I told them that I thought it came from dead matter and he said it came from the mica in the shale, and I says, "I know better than that because I found oyster shells; solid shells, where you find it in the center of the shell, and there is no chance for it to get in there, because it was right in the shell." And I saved some of them when they came back and gave it to Owen, the mineralogist. [48]. I found an anticline running through the Elk Hills. It runs northwest and southeast, I believe. It is about on the line from McKit-

trick to the Elk Hills. I found that anticline, or evidence of that anticline, in the immediate vicinity of where I saw this blow-out in the Elk Hills.

CROSS EXAMINATION OF IRA M. ANDERSON.

That anticline runs generally southeasterly and northwesterly right straight through. I know what are now called the Elk Hills. They were the Buena Vista Hills then. To the south of these hills there is quite a flat plain before you strike the other range of the Buena Vista Hills. One of the anticlines passes direct through the Buena Vista Hills. A second anticline begins about nine miles from old headquarters. That sand goes through there. That is what I call an anticline. I don't know whether it is or not. By the old headquarters I mean the Miller & Lux old camp. The evidence that I found of the existence of that anticline was asphalt and oil sand. The last time I saw the asphaltum deposit was a couple of years ago. As you travel from McKittrick in an easterly direction through the flat, you can see that deposit to the right; some of it is to the right and some on the left. The asphaltum on the left is about a mile from McKittrick. The flat is all covered with it. Looking at this exhibit, here is McKittrick and that dotted line indicates a wagon road leading down through the flat, down towards the Buena Vista Lake. To the north of that is what is called Elk Hills now. To the south of that is what is labelled on this map as the Buena Vista Hills, a narrow range of hills com-

pared with what is marked as Elk Hills. I am referring to the flat lying to the north of this narrow range of hills and the one which leads [49] right over to the Buena Vista Hills. Now in following this road out of McKittrick down through that flat, you could see asphaltum to the left as you travelled in that southeasterly direction. It is in that valley; it is all over the flat. It is up there in the northeast corner of Section 26, Township 30 South, Range 22 East, and on Section 22 in the same township and range. I have seen deposits of asphaltum or brea north of that in this range of hills called the Elk Hills on this exhibit "I." It was over there about seven or eight miles from the old headquarters camp, the dredger camp, southeast from the headquarters ranch about seven or eight miles. I have gone to this deposit from the headquarters ranch and in doing so travelled southeast. I first saw this deposit in 1900, when I first came in the country, and I based my conclusions that an anticline existed there from this surface showing of brea and asphalt and from the oil sands and stuff in there. I made no examination of the country to determine the stratification but the parties that were with me did. Tom Malone and a man named Scott were with me. They discovered it in my presence. It shows for itself right there from this oil sand, southeast of Miller & Lux's ranch headquarters. When I first went into that country I knew nothing about the Elk Hills. It was always called the Buena Vista Hills by me. I never heard of the Elk Hills until the last few years. There is quite

a pronounced anticline near the town of McKittrick and to the south and west of it. I believe only the east side of that anticline shows. It dips away from the town of McKittrick.

REDIRECT EXAMINATION OF IRA M. ANDERSON.

The Headquarters Ranch and the Dredger Camp that I spoke of are two different places. I know where the Buena Vista Lake is. It is near to the Dredger Camp. The Dredger Camp is on [50] the canal. The old headquarters ranch is not on the canal. What we used to call the Deep Water Ranch is right on the canal. The time I went to the blow-out in the hills I went from the Dredger Camp, which is about nine miles from Buena Vista Lake. McKittrick lies north and west from Dredger Camp. I went in that general direction from the camp to this blow-out. The railroad that runs to McKittrick is the one that runs through the railroad out within a half a mile of which I found the asphalt deposits I spoke of. The railroad cut that I mentioned is about two miles from McKittrick, and the cut is about half a mile in length with hills on both sides of it. The cut is very pronounced and this asphalt that I mentioned I found within a half a mile of the railroad is on the right-hand side going from McKittrick to Bakersfield.

RE-CROSS EXAMINATION OF IRA M. ANDERSON.

In going from the Miller & Lux Ranch, which I call the Dredger Camp, to this blow-out, I went pretty nearly northwest about seven or eight miles.

REDIRECT EXAMINATION OF
IRA M. ANDERSON.

I did not go right up the canal; I cut across the Buena Vista Hills [61]

F. J. SARNOW, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am living in East Bakersfield. I am forty-two years of age and have been engaged in the oil business seventeen or eighteen years. I first went into the McKittrick Field in 1899. I was hired by Mr. J. B. Treadwell at Summerland to go there. Before I went there I was drilling oil wells at Summerland. When I came up from Summerland to McKittrick I shipped two rigs up there. One was a standard rig and the other a portable Star rig. They were shipped on the Southern Pacific Railroad and no freight was paid. They were shipped to the Southern Pacific Company, care J. B. Treadwell, McKittrick. I drilled eleven wells in the McKittrick field for the Southern Pacific Railroad. Ten of them were producers. Mr. Treadwell at that time was working for the Southern Pacific Railroad. He was the head of the Oil Department. I have seen Mr. Huntington and Mr. Kruttschnitt at McKittrick. It was in the last part of 1899 or the first part of 1900. At that time I was at McKittrick on the Southern Pacific property there, and they came out there where I was and Mr. Treadwell was with them. There were six or seven railroad officials came there at that time and Mr. Treadwell introduced me to them. I was introduced

as "our foreman" by Mr. Treadwell. I know the Elk Hills. In those days they did not have a name, but they were referred to as the Buena Vista Hills. In those days there was no development in the Elk Hills. When I first went to McKittrick I put down the first well there that made a well. That was in 1899. There were some wells there at that time at old Sunset. Old Sunset is four miles past Sunset in going from McKittrick. I have been in the Elk Hills and I consider them as oil territory, although it was expensive territory. I had a talk with Treadwell about different lands. He [52] thought there was oil in those hills, although it would be expensive. I am acquainted with the country all the way through and know the top of those Elk Hills. I have been through there in different parts and the land is not valuable for agriculture. The rainy season there is from December to March. The surface of the ground on top of those hills is rough and barren. The only vegetation is some sagebrush, unless there is an amount of rainfall, when there is a little grass grows, which does not last for very long. I know Mr. Treadwell was in the employ of the Southern Pacific Company as an oil expert through my connection with him and with the Southern Pacific Railroad Company. We were furnished with regular Southern Pacific letterheads, envelopes with "Southern Pacific" stamped on them. If we wanted any material in 1900 and from then on, any materials needed on the lease, that is, for the Southern Pacific work, we had to send a regular requisition to San Francisco. Passes were

issued to any of the men that were working there. I would wire to Burkhalter and passes were sent. And if we wanted them quick, it would be sent by telegraph. Any business from Wells Fargo or the Western Union was franked. I once paid a bill to Wells Fargo and I was told not to pay any. All freight that was sent was tagged S. P. The name of the article was on and what division it was on. Out there it was shipped S. P. Company, care J. B. T. The time sheets that we made out there we made out on regular Southern Pacific time sheets, about 18 inches by 20 inches. All the employees had to sign them when they got their check. Treadwell had one of these gasoline velocipedes that the Southern Pacific used for track inspectors. It was kept in the S. P. shops at Kern, and he would come out there and then take it back to the Southern Pacific. The railroad officials that would come out there—I don't remember that Kruttschnitt was out there with Huntington—but they were out there four or five times. There was one time H. E. Huntington came out. But I [53] know they came out four or five times. Any machine work that they could do in the Southern Pacific Railroad shops was sent down there to be done in their shops. All the employees working on the property, outside of my own contract work, had to pay hospital dues, and it was taken out of their checks. The hospital that I referred to is the Southern Pacific Hospital in San Francisco. I sent four or five different men there on passes. When anybody got hurt I had a wire pass sent from Burkhalter at Bakersfield, and

I would wire the S. P. surgeon at Kern to meet them, and he would meet them and examine them and see if he could do anything for them; and if he couldn't, he would get a pass and send them to San Francisco Hospital—if it was anything serious. J. B. Treadwell was on the McKittrick payroll drawing $300 a month from the Southern Pacific. When I refer to the McKittrick payroll I do so to distinguish it from the Kern Field, which had its own payroll. Mr. Treadwell had talked to me about Kruttschnitt and the credit he had with most all the banks around. The Southern Pacific furnished the money. I remember his telling me that he had some leases in Spindletop, Texas. He also showed me some passes. He had his yearly pass on the Southern Pacific, on the Santa Fe, a Pullman pass and passes on the United Railroads and passes on the electric cars in Los Angeles. I don't remember what company it was in Los Angeles that he had passes on, but he said he got them all through the Southern Pacific. I was discharged by Mr. Treadwell by letter. The letter discharging me is plaintiff's exhibit "J-1" and "J-2". I am acquainted with Mr. I. M. Anderson, who was on the stand just before me. I also know Mr. Henry Thompson. Anderson worked both for me and the Southern Pacific. Henry Thompson was my bookkeeper out there for the Southern Pacific. Sometimes Mr. Treadwell would come out to the fileds and stay a week and then again he wouldn't come for two months. Sometimes he would stay a [54] day. He was in the business of acquiring oil lands or lands valuable

for oil for the Southern Pacific. It was his custom, wherever he would hear of a strike of oil or good prospects of oil sand discovered, to look at it. That is how he came to go into the McKittrick Field. He told me that he kept plats or maps of the country on which he marked down the places. I knew Josiah Owen by sight. I saw him around McKittrick while I was there. My knowledge and belief was that he was a geologist of the Southern Pacific Railroad Company. He used to come out there and ride around in the Southern Pacific buggy. Sometimes he would be alone and sometimes somebody would be with him. When he was at McKittrick he stopped on the lease or at the hotel. He would stop at the south end some and at the north end some and sometimes at the hotel right in town. I saw him out there a good many times; possibly fifty or sixty times, from the time he went into the employ of the Southern Pacific after Treadwell was out, until within about five years ago. I don't know just what year Treadwell left there, but Owen came there after Treadwell left, which was before 1904. I knew E. T. Dumble by sight. I never knew whether it was Dumble or Owen that took Treadwell's place as oil expert for the Southern Pacific. I understood it was both of them took the place Treadwell had. Dumble was a man about fifty-five years of age. I saw him there possibly fifteen days during the same year that I saw Mr. Owen there. He was doing just the same as Mr. Owen—driving around the country with the Southern Pacific's team and he stopped either at the Southern Pacific lease at the

south end or the north end. I know Mr. Treadwell located some land. I don't know for whom he located it. I don't know of his locating any land in the Elk Hills. I have seen oil outcroppings in the Elk Hills. They were located on Section 14, Range 22 East, Township 30 South. There are oil crops and sand on the east side of the railroad there on [55] that section and there is dry oil and over flow on the west side of the wagon road. The wagon road is on the west side of the railroad. There is oil—there is some others there. I don't know what sections they were on, but I saw several different spots where there were oil crops. I never went right on the ridge and travelled right through on the Elk Hills. I maybe went up the canyon and travelled the ridge a mile or two and then would go down again, I saw four or five outcroppings of sand on the Elk Hills. I know where the Miller & Lux ranch is on the canal, the one that is called the Old Headquarters. I know of oil sands in the hills southwest of Miller & Lux's ranch. They were around in that country about Section 25, Range 23 East, Township 30 South, and Section 30, Range 24 East, Township 30 South. I am not positive whether it was exactly in those sections, but it was in that neighborhood, as I never came up from Miller & Lux's Headquarters that way. I know of oil croppings or sand between McKittrick and Sunset in the Tembler Range. There are quite a few outcroppings of oil sands and blow-outs northeast of the Tembler Range or north of it. They are on the small hills through McKittrick called the McKittrick Hills.

There are some outcroppings between Sunset and Maricopa, probably two or three miles from Sunset towards McKittrick.

CROSS EXAMINATION
OF
F. J. SARNOW.

When I speak of Mr. Treadwell, I speak of him as the head of the Oil Department of the Southern Pacific Railroad. I worked for J. B. Treadwell and the Southern Pacific Railroad Company. The time sheets and letterheads that I used and the envelopes marked "Southern Pacific Railroad Company" are the **[56]** same as the one introduced as an exhibit, "J-1". I understood I was working for the Southern Pacific Railroad Company. I never saw C. P. Huntington out there, but I did see H. E. Huntington. I was there continuously from 1899 up to 1907 or 1908. I was not employed by Mr. Treadwell after March 28, 1901. The first well which I put down in McKittrick, which was a real well, was a little over four hundred feet deep. That was in 1899. Prior to that time I had been engaged in the oil business about five years at Summerland. My experience has been in California exclusively and I was quite familiar with the methods then in vogue of sinking wells. I had had four or five years practical experience. I had made no extraordinary study of the method of sinking wells. Before 1899 I had drilled wells by contract and drilled some of my own in Los Angeles. I had drilled some wells over a thousand feet. The depth would all depend on the formation you were

going through and what kind of a hole you had; whether it was a wet hole or a dry hole. The deepest well I had drilled up to that time was something over a thousand feet. It was in Los Angeles. There were a lot of them in Los Angeles over a thousand feet in depth in 1899. I never heard expressed how deep it was possible to go at that time, although I was in the oil business exclusively. There is no maximum depth today, but it depends on the formation of the hole. In 1904 there was a well in McKittrick some 2250 feet in depth and it was the deepest in McKittrick at that time. I don't remember the first time I went to this sand blow-out in the Elk Hills, as I went there so often I never kept a record of it. It was all between 1900 and 1907. Prior to 1904 I considered the Elk Hills as oil territory, although it was expensive. There is no water in that country. It would have to be hauled, and water was expensive at McKittrick, and to ship it by railroad it would be expensive that way. And the territory was quite deep, that is, deeper than it was around [57] McKittrick where we were drilling at that time. The wells were not very deep there at that time. You could get wells not deeper than a thousand feet, and where I was drilling you could get them 350 or 600 feet, and if you went fifteen or sixteen hundred feet it would be considered a deeper hole than what we would consider over there, considering what we were drilling on. You have to have water to drill a well. I never heard of one being drilled dry. Water was one of the factors which I took into consideration in passing on the

territory as a prospect, and the reason I regarded the Elk Hills as expensive was because it did not have water and because I thought it was probably deep. I thought the depth would be 1500 or 1800 feet, which at that time was too deep for practical operations and besides we had plenty of territory that we were drilling on. I was interested in locations in the Elk Hills. They were on this blow-out. Associated with me were John Jean and my brother and Treadwell and several others. The location was made by others and they put my name in, but I don't know that I was in that particular place or not, as I was not there at the time when the location was made, I have no interest in that location now. I don't know what became of it. I never took any steps to go ahead with it as I never had the money to invest. I did not endeavor to interest anyone else. I understood Mr. Treadwell had a great deal of money, but he did not use any of it in developing that particular territory, to my knowledge. The Southern Pacific lease that I spoke of is close to the present town of McKittrick. Our camp was put on the Southern Pacific right of way when we started in. The oil wells were located on the ground which belonged to the Buena Vista Oil Company. The Southern Pacific Company leased from what was called "Our Own Oil Company" and they leased from the Buena Vista Oil Company, and it went through one more lease and then it was turned in to the El Dorado Oil Company. It went through [58] two or three more leases and was then sub-leased to the Southern Pacific under an option to buy it. The

Southern Pacific operated that well for the purpose of obtaining fuel for use on their lines. They used the oil for that purpose and the engines used to take the oil at McKittrick from the oil produced on the south end, Southern Pacific lease. When I wanted a pass I had no trouble in getting the same, but would either write or wire Burkhalter and he would send it to me. Whenever men were injured on the lease they went to San Francisco on the passes. I had trouble with Treadwell in 1901, resulting in his writing the letter of dismissal to me. He had had some difficulty with my brother and he told me he did not want him on the property. During the Christmas time my brother came and paid me a week's visit and when Treadwell heard of it he was pretty mad and he came up there, as he said, with the intention of letting me out. I told him to do whatever he wanted, so the next day I got the letter of dismissal from him. I kept it as it was the only time I have ever been discharged. I felt that I was unjustly discharged and I felt sore, as I thought it was mere boy's play, the way it was done. I have nothing against Treadwell, as he is a good man to work under. I have nothing against the Southern Pacific, although I felt sore at the time. I don't feel sore any more, as I found out I could get along with out the Southern Pacific and Treadwell. I am testifying to the truth. That is all I am testifying to. It is nothing to me who wins the suit. It has nothing to do with my locating of the oil sands on Section 25, in Township 30 South, Range 23 East, as the sand is there in that neighborhood. I am now drilling in that

same anticline on Section 6, Township 30 South, Range 22 East. I have drilled three wells there and worked on the fourth. I base my conclusion that there is an anticline there because it runs from near Buena Vista Lake, where that blow-out is, to thirty-five [59] miles northwest of McKittrick, and I have drilled six wells on that same anticline, and sometimes you don't see it for a couple of miles and then it crops out again with blow-outs of oil sand. This anticline is an outcropping of oil sands and blow-outs and the formation surrounds it. The formation is shale, clay and gypsum. The oil sands show stratification from which you can determine it is an anticline. They show stratification on Section 36 in the same township and range that Section 6 is in, that is, 29 South, Range 21 East. I drilled two wells on Section 6 eight or nine years ago and just finished one there last week. I drilled two further up about eight miles further west, possibly ten years ago, along in 1901 or 1902. I have not drilled any wells at any point east of the Elk Hills and north of Buena Vista Lake, as I don't think that anticline is over there, and I don't know of anyone drilling over there.

M. S. WAGY, called on behalf of the plaintiff, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Mills:

Q. Where do you live, Mr. Wagy?

A. San Francisco.

Q. Are you a relative of J. I. Wagy?

A. Yes sir.

Q. A cousin?

A. Yes sir.

Q. Were you in the Elk Hills at any time locating lands for oil purposes?

A. Yes sir.

Q. About what was your first visit there? **[60]**

A. 1899 or 1900; along during that time.

Q. How came you to locate land there?

A. We found what we thought was an indication of oil there.

Q. Describe those conditions.

A. A break or blow-out—seepage.

Q. Can you tell me where that location was? That is, that discovery?

A. It was on the northwest quarter of Section 32.

Q. In what township and range?

A. 30—24.

Q. Will you give a detailed description of what you found there?

A. Well, we found gypsum there and Fullersearth —that is, in that immediate country.

Q. I mean in this outcropping?

A. There was a gulch right down through there and this outcropping was caused by the wash washing surface dirt away. It might have been that, but it cropped there.

Q. What was the nature of the oil sand that you found?

A. It was practically dead sand. There was an odor in it of oil in it or petroleum.

Q. Was it stained?

A. Oh yes; it was black.

Q. What was it, oil sand or not?

A. Yes sir.

Q. How did you come to go in there? Who got you to go in there?

A. Mr. Drouillard. He had told me about those indications of oil.

Q. He was the gentleman who was on the stand in the early part of this hearing?

A. Yes sir. **[61]**

Q. Did he go there with you?

A. Yes sir.

Q. Have you done any oil developing yourself?

A. Yes sir.

Q. Where abouts?

A. Kern River field and McKittrick, and Temblor.

Q. Anywhere else?

A. No sir.

Q. How extensive has been your work? How many years?

A. Since 1898.

Q. Who were your associates that you were interested with in the Elk Hills because of that discovery?

A. At that time I don't know as I could tell them all. There was quite a number of names used, mine among others.

Q. Can you recall some of the names?

A. Mr. Drouillard and Charlie Lamont, T. A.

Baker of Bakersfield. I think we used our wives names in some instances.

Q. Was Mr. Youle in it?

A. Not at that time he wasn't.

Q. Was Mr. Packard?

A. Yes sir.

Q. One Roper?

A. J. T. Packard was one of our associates at that time.

Q. Was Mr. Blodget?

A. No sir: Not at that time.

Q. Did you locate more than one section of land?

A. Yes sir: we located a number of sections there.

Q. How many sections did you locate?

A. That has been a good while ago. I don't just remember the number. I can't recall now just the number of sections. We took everything that looked good.

Q. Did you locate any lands in 30—23 and in 30—24? **[62]**

A. Yes sir.

Q. About how many sections did you locate altogether?

A. To the best of my recollection I was interested in eight or ten sections. I can't be positive of that. I didn't keep any record of it.

Q. Did you try to burn any of that asphaltum or deposit that you found there or for fuel?

A. Yes sir; we used to throw it on the fire.

Q. State whether or not it would burn?

A. Oh yes; it would make a smoke and smell and it would blaze up after it het up.

Q. Give any odor of oil or gas?

A. Yes sir.

Q. Who paid the location expenses?

A. I paid some of them and I suppose the others done the same. I don't remember just now. I know I paid my proportion of whatever it was.

Q. What year was that?

A. 1899 first, and then I was in there in 1900.

Q. Did you sell out your interest in those locations?

A. Yes sir.

Q. Whom did you sell to?

A. To Burt Packard, known as Burt Packard, an attorney—or Burt Packard. I forget his initials.

Q. By Mr. McCormick—H. L.?

A. H. L., yes sir.

Q. By Mr. Mills—How much did you get?

A. I got three dollars an acre.

Q. Do you know whether there was any tunnels or shafts dug in the Elk Hills near those locations or by any other parties?

A. There was later on. **[63]**

Q. Did you see it?

A. Yes sir.

Q. How deep was it?

A. Maybe tweenty feet. I never measured it.

Q. Did it show any indications of oil?

A. Yes sir.

Q. Do you know a man named J. B. Treadwell?

A. Yes sir.

Q. What was his business at that time?

A. The oil business.

Q. Who was he working for?

A. I don't know.

Q. Whom did you understand he was working for?

Mr. Lewers—Objected to on the ground that it is calling for a conclusion, and hearsay.

A. I understood he was working for the Southern Pacific Railroad.

S. Do you know whether or not he was in there for the purpose of making oil locations?

A. He made oil locations.

Q. Where abouts?

A. There was a number of locations. They were around McKittrick or in that neighborhood.

Q. Did he make any locations in the Elk Hills?

A. Not to my knowledge.

Q. Do you know a man named Youle?

A. Yes sir.

Q. Did you know him at that time?

A. Yes sir.

Q. Were you in any of the locations in which he was interested?

A. Not at that time. I was not interested. **[64]**

Q. Do you know whether he became interested subsequent to that time?

A. Yes sir; he became interested—yes, after I had sold out he became interested.

Q. Did you recognize any anticline where you made those locations?

A. I recognized what we called an anticline.

Q. Describe it. What was it?

A. It was the general trend of that ledge through there, and the formation pitching to the southwest. I believe that it was what they call an anticline. I don't know.

Q. In which direction was it running?

A. Northwest and southeast.

Q. Was Drouillard the man that first made the discovery there?

A. That is the first I know about.

Q. He told you about it?

A. Yes sir.

Q. Was he regarded as a geologist?

A. I considered him very good at that, and a very close observer.

Q. What is your opinion of the Elk Hills as an oil territory?

A. I think it is good.

Q. Was that your opinion as early as 1899?

A. Yes sir.

Q. What is your reason for regarding that as a good oil territory?

A. Well, we had the same indications as we had where we were getting oil. Better indications than in the Kern River field where we were getting oil.

Q. What was Mr. Drouillard's opinion of it, if you know.

A. I talked with him about it in a general way. He thought it was good. **[65]**

Q. When did you have that talk with him?

Q. 1900 or 1901 or somewheres about that time.

Q. Have you ever noticed any oil stains in what is known as the Buena Vista Hills south?

A. There is what we call a break there running there—I forget the section that is on now, because I never located any land there or ran out the sections.

Q. Do you know of any other indications of oil around that territory?

A. In the Elk Hills?

Q. Yes.

A. There was an outcropping on 26.

Q. In what township and range?

A. 30-23.

Q. What was the nature of that outcropping?

A. It was not as good as the one on 32. In 30-24.

Q. What is the nature of the surface of the hills there?

A. They are very rolling and very rough; unless you get on a ridge or in the gulch you can't drive through that country, or couldn't at that time, because there was no road.

A. Are those lands covered with vegetation?

A. No sir.

Q. What is the nature of the soil there?

Q. Shale and sage brush.

Q. Any water?

A. No sir.

Q. Is the land susceptible of economical agriculture?

A. No.

Q. Do you know a man by the name of Josiah Owen in his life-time?

A. I have met him.

Q. What was his business? **[66]**

A. Well, he was looking—he was what we call a geologist. He was looking at all those seepages and breaks. He was making examination of them in the different districts there.

Q. Around the territory you have mentioned?

A. I don't know that he was over there.

Q. Did you ever show him the sand taken from Section 32?

A. I showed him what came from there and told him where it came from.

Q. When was that? What year?

A. I think that was in 1900.

Q. Subsequent to that time did you have any talk with him?

A. Yes sir.

Q. How long after that?

A. During the time he was there—1900 or 1901 or somewhere along about that time.

Q. What did he tell you about that country, if anything, at that time?

A. Mr. Lewers—To which we object on the ground that it calls for hearsay testimony without any foundation being laid to show that Mr. Owen was authorized to make representations or statements for any of the defendants in this case.

A. He thought that was good.

Q. By Mr. Mills—Did he say he had been out there?

A. He didn't say at that time. He said he thought

that was an oil district. He did not tell me that he had been out there, but he told me lots of places that he thought was good or bad that I never asked him if he was there, and I supposed he was there.

Q. You told him about this oil sand. Did he at that time state where it was?

A. No, he didn't know where it was, he said, and he didn't know. **[67]**

Q. Did he know after that time where it was?

A. Yes sir.

Q. Did he state to you after that that he was out there and knew where that oil sand was?

A. He said he knew where it was. We compared notes quite often on the country. He was traveling over the country a great deal.

Q. How often did you talk with him about the different parts of the country there?

A. I can't tell. Most every time we would meet or get together, either in Bakersfield or McKittrick.

Q. Did you discuss oil territory with him?

A. Yes sir; in a general way, about where those breaks occurred and where they ran and so forth.

Q. Now, referring to the Elk Hills, didn't you say to me yesterday that Mr. Owen had been out in the Elk Hills?

A. I don't know. He might have. I naturally supposed he was out there.

Q. What made you think he was out there?

A. He passed on the territory.

Q. Did he show a knowledge such as he would get from personal observation in his talk to you?

A. Yes sir. But that was about all the talk we had. He passed on it as good. We were all trying to get information as to where the oil belt was in that country, in that district.

Q. Did you tell him where you had your locations?

A. Yes sir. But I had sold the locations at that time.

Q. That was in 1901, you say?

A. I think that was the date. I can't be positive about the year.

Q. Did you see any plats or maps of Mr. Owen at that time?

A. No sir. [68]

Q. Or during any of these talks you had with him?

A. No sir.

Q. What, if anything, did he say about holding on to your locations?

Mr. Lewers—I object to that as leading and suggestive; and I object to the constant leading nature of the questions. You might as well read Mr. Owen's alleged answer into the record. The witness is intelligent and able to tell what it was.

A. I think I had sold my locations at the time I talked to him.

Q. By Mr. Mills—The first time you talked with him had you sold your locations?

A. I don't know if I had then, but I think a little later on.

Q. You are not positive that you had sold them at the time you talked with him?

A. Not the first time.

Q. Did he give you any advice as to the locations the first time you talked with him?

A. No.

Q. Did he at any time?

A. Later on he told me that that was oil territory.

Q. Is Mr. Baker that you have mentioned a geologist?

A. He is a prospector, I guess. That is what you call him. He acted in that capacity at that time.

Q. Have you any locations in the Elk Hills now, Mr. Wagy?

A. No sir.

Q. You sold out all your interests?

A. Yes sir. **[69]**

CROSS-EXAMINATION OF M. S. WAGY.

By Mr. Lewers:

Q. Do you know what became of those locations that you made in there?

A. No sir.

Q. Have you ever been back since that time?

A. I was over that district a year ago.

Q. Were you in that portion of the district?

A. Yes sir.

Q. Was there any work going on in that territory that you had originally located?

A. There was several rigs in there, some of them drilling and some of them just derricks.

Q. Where were they?

A. Some on 28 and some on 26, and I think there was—I couldn't place it, just going there going over

it—on the sections. I think it was on 31 and 32. Somewheres in that district.

Q. They might have been on 30?

A. Yes; it was in that neighborhood. I didn't stop to establish any corners.

Q. Do you know of Mr. Packard now having any interest in that territory?

A. No sir.

Q. Have you ever had any talk with him since that time?

A. Up to the time of his death, yes.

Q. Mr. Packard is dead?

A. Up to the time of his death.

Q. When did he die?

A. I think it is about three or four years ago. **[70]**

Q. Did he ever tell you whether he had kept those locations or not?

A. No.

Q. Did you ever learn from any conversation you had with him whether he had kept up his location work?

A. Yes; they were doing their location work after I had sold.

Q. How long?

A. I don't know how long they continued.

Q. Isn't it a fact that the claims were relocated in 1903?

A. They might have been.

Q. Were they not relocated in 1901 or so?

A. I haven't any knowledge about it.

Q. Did you and your associates do all of the nec-

essary location work?

A. I didn't do any.

Q. You sold out right away?

A. Yes sir.

Q. That was at a time when there was some considerable speculation in oil lands?

A. Yes sir.

Q. And a great deal of territory was being located and disposed of without any actual development?

A. Yes sir.

Q. A considerable excitement, was there not?

A. It was just the man that could make the best guess where the oil was that made the money.

Q. And to your knowledge there was a great many claims located on territory which has since proved unproductive?

A. Yes sir.

Q. It was the same old story of locating every old thing in the country because there was a good strike in one place? [71]

A. I didn't do that.

Q. I am not speaking of you.

A. Oh yes. Others done locating every where.

Q. That had some influence on you, didn't it?

A. No sir. I wouldn't go to locate a piece of land that wasn't good. I wouldn't put money into a proposition of that kind.

Q. I didn't make myself clear. What I mean is when you found this blow-out or what appeared to be oil sand, although you did not discover anything more than that, that looked promising enough so

that, considering the general situation, you were willing to make a location?

A. Yes; that was good enough for me.

Q. But you did not endeavor to hold on to it yourself and never made any effort to develop it yourself?

A. No sir.

A. And, so far as you know, your successors, did not, did they?

A. Not that I know of.

Q. You say that this blow-out that you have referred to was in Section 32, Township 30-24? Is that correct?

A. Yes sir.

Q. How do you fix that location?

A. Well, we ran it out in lines and in surveys, and carried that survey right through in all that locating.

Q. Was that territory surveyed at that time?

A. No sir.

Q. Then you had to construct for your own purposes lines along where you proposed the government lines would run? Is that correct?

A. We know where they are now.

Q. Had the government lines been run at that time? [72]

A. The township lines had.

Q. Of which township?

A. We commenced at 30—24, at the corner down near the Headquarters Ranch.

Q. Had that township been run and surveyed by the government prior to the time you went in there?

A. The township corners had been established.

Q. But it had not been divided into sections?

A. No sir.

Q. You started from the township corner and constructed the section lines in order to locate yourself?

A. Yes sir.

Q. You started near the Headquarters Ranch?

A. Yes sir.

Q. You mean the Miller & Lux ranch on the canal?

A. Yes sir.

Q. How far and in what direction from the Miller & Lux headquarters on the ranch was this blow-out?

A. It was southwest.

Q. How far?

A. I don't know. I never measured it. I never went that way, because we couldn't travel that way. It was five miles or six or something in that neighborhood.

Q. Down on to Section 32?

A. Yes sir.

Q. You located in all, as near as you can recollect, how many sections?

A. I don't remember now.

Q. As near as you can recollect?

A. Probably there was from six to ten sections.

Q. You went in by the wholesale?

A. Yes sir. **[73]**

Q. There was no possibility with the means you and your associates had of developing that territory?

A. Yes, we had ideas.

Q. But did you have the means to back up the ideas?

A. We might have had.

Q. That is, you might have raised the money?

A. Yes sir.

Q. If you had struck anything good enough you were in a situation where you could interest capital?

A. Yes sir.

Q. Did you ever endeavor to interest capital in that?

A. No sir.

Q. Did you locate any claims in that large area east of this first location in Section 32?

A. There was one section, I think, or two east of that.

Q. Any north?

A. Yes; I think there was four sections in that first group. Five, or maybe four. I can't determine just now without going right to the map. I haven't any notes. It would be hard for me to determine.

Q. You say you have no notes in your possession showing where you were?

A. No; not now.

Q. Did you have anything to do personally with the preparation of any location notices?

A. I don't remember.

Q. Or the recording of any?

A. The recording of them and so forth. I don't know whether I wrote the notices on those claims or not.

Q. Had you located any claims in other territory about that time?

A. Yes sir. **[74]**

Q. Where?

A. I was in with the McKittrick Oil Company that located three sections at McKittrick, and also some land in the Midway and some in Temblor.

Q. Did any of them turn out a profitable venture in the way of production of oil while you were interested?

A. Yes.

Q. Where was that?

A. The McKittrick Oil Company had about three wells. Three wells, I think.

Q. Did you get outside capital interested in that property?

A. Yes sir.

Q. And developed it?

A. Yes sir.

Q. You say there is no vegetation in the Elk Hills outside of sage brush?

A. Sometimes there is a little.

Q. Were you ever there in the spring of the year?

A. Yes sir.

Q. Is there any grass there?

A. Sometimes, if it is a good year, there is grass there. If it is a bad year there isn't any.

Q. If there is rain in the winter or spring there is grass?

A. Pretty heavy rain. If it is a dry year there is nothing in the oil fields anywheres. In a good year all that territory in McKittrick is good feed.

Q. Have you ever seen any sheep grazing in any portion of the Elk Hills?

A. Yes sir.

Q. When did you see them there? [75]

A. Most all times that I have been there there has been sheep in that district. You would see them all along the mountains.

Q. That is, it furnishes a spring range for sheep?

A. Yes; when they don't require water.

Q. And later on they move to the higher mountains?

A. Yes sir.

Q. That is the general practice of handling sheep everywhere?

A. I believe so.

Q. Mr. Wagy, do you remember anything about the kind of location notices you used when you first got them?

A. I think we had that Bakersfield Echo print the notices from a copy of Bancroft's Forms.

Q. Didn't you print a great many of them with the names of the locators printed with the rest of the notice?

A. No, I don't think I did.

Q. Of course, that is some tome ago. Isn't it possible that that is what was done?

A. There might have been others interested with me added notices printed that way.

Q. And your name might have appeared that way?

A. Yes sir.

Q. Isn't is possible that a large number of notices were printed in this way for the purpose of plaster-

ing them on considerable territory during the excitement?

A. Well, it would expedite matters, yes.

Mr. Lewers—That is all. **[76]**

DIRECT EXAMINATION OF M. S. WAGY.

By Mr. Mills:

Q. You heard Mr. Drouillard's testimony the first morning?

A. Yes sir.

Q. Was he interested in the same set of locations that you were when you first went in there?

A. Yes sir.

Q. Were the only locations he was interested in to your knowledge in the Elk Hills?

A. Yes sir.

Q. You say that part of your locations were in 30-23?

A. Yes sir.

Q. How many sections were in 30-23?

A. I don't remember now.

Q. Did they join on to the locations you made in 30-24?

A. Yes. Our land was all in one bunch.

Q. And the township line divided them?

A. Yes sir. It went through the land.

Mr. Mills—That is all.

RECROSS EXAMINATION OF M. S. WAGY.

By Mr. Lewers:

Q. How did you know—that is, how is it that you fixed it in your mind that you had any of your locations in Township 30-23?

A. In running it out I could remember the township and range very readily through that whole country in many instances [77] where I could name the sections.

Q. Isn't it possible that you made an error in the number of the range?

A. In that township? No sir.

Q. You don't think it is possible?

A. No, unless the land has moved since I went on it.

Q. Suppose the land remained exactly as it was except for the natural process of erosion. Wasn't it possible that in going in there you inadvertantly put the wrong range number on?

A. No. We had two ways of proving that work, and I done that. I proved it from the east and from the west, and I could get a starting point at McKittrick for 30-22. I knew that township corner. And we proved it in that way. And in selling that I had to prove it, and I proved the territory out from both ends.

Q. What township corner did you start from?

A. 30-24 on the east and 30-22 on the west.

Q. Was that anywhere near the Headquarters Ranch?

A. 30-24 was.

Q. How far from the Headquarters Ranch?

A. My recollection is the corner is not very far from there.

Q. Which corner of the township was that?

A. The northeast.

Q. You say "not very far." Can you be a little more specific as to how far it was approximately from the ranch?

A. Well, it might have been a mile and a half or two miles.

Q. In which direction?

A. From the ranch? Nearly south. South or a little east of south.

Q. That is the corner you started from?

A. Yes sir.

Q. And you have quite a distinct recollection of that starting point? [78]

A. We had to get that off of the plat-book and we had to get Miller's foreman, a man named Brown, to locate us on the starting point.

Q. He was the foreman of the Miller & Lux ranch?

A. Yes sir.

Q. He took you down to that corner?

A. He said that was the corner.

Q. And that was what corner of the township?

A. The northeast.

Q. And you took the corner that he pointed out? How was that corner marked?

A. It was marked by a post, and then charcoal in the ground.

Q. What were the markings on the post?

A. I don't remember now.

Q. Do you remember seeing any at all?

A. Yes; I think there were. Most all of the posts were marked.

Q. Can you remember as you think back what

those markings were? It is quite important that we should know.

A. I can't tell you.

Q. And you yourself personally went to that corner with the foreman of the ranch, did you?

A. Yes; we went to it, and the boys went to it and started from there.

Q. In what direction, again, was it from the ranch?

A. My recollection is that it was south and a little east of south.

Q. That was the northeast corner?

A. Yes sir.

Mr. Lewers—That is all. **[79]**

REDIRECT EXAMINATION
OF
M. S. WAGY.

By Mr. Mills:

Q. Which ranch was that?

A. What was known as the Headquarters Ranch. I don't know what they call it.

Q. Just step over here to the map a minute. They had three ranches. Here is 30-24; here is 30-23; here is Buttonwillow.

A. Headquarters Ranch ought to be here somewhere.

Q. How far was it from the railroad?

A. Headquarters Ranch was six or seven miles South.

Q. Here is the township corner over here. Do you mean the Miller & Lux ranch was south or that

the corner was south of the Miller & Lux ranch?

Mr. Lewers—I object to that manner of leading and suggestive questions.

A. I don't remember how that is exactly, but we went from that ranch to that corner.

Which corner? Was it this corner that you went to or this corner?

A. This is north?

Q. This is north. Here is the seep you spoke of in 32. You said some of the lands joined on that, in 30-23.

A. That is my recollection of it, going in that direction.

Q. You see where the Miller & Lux ranch is? It would be about Section 15?

A. Yes sir.

Q. And the northeast corner is about two miles or two miles and a half from there——

A. I have lost track of it. **[80]**

Q. You want to correct that testimony, do you?

A. Yes sir.

Q. Are you satisfied, however, that the township line between 30-23 and 30-24 ran through the locations that you made?

A. Yes sir.

Q. You are positive of that?

A. Yes sir.

Q. So that a portion of the locations were in 30-23?

A. Yes sir.

Q. You found a blow-out in 26 of 30-23?

A. Yes; there was indications there.

Q. Did you locate on that land?

A. No; that was located.

Q. Did you locate on any sections adjoining it?

A. No.

Q. You found a seep of 32 of 30-24?

A. Yes.

Q. Did you find one in 26?

A. There was a disturbance there in 26 of sand or shale broken up that we were over.

Q. In 30-23?

A. Yes, but I don't have any recollection of locating that land.

Q. You did locate in 30-23 adjoining to the west the locations in 30-24?

A. Yes sir.

RECROSS EXAMINATION
OF
M. S. WAGY.

By Mr. Lewers:

Q. Did you locate any land adjoining Section 26 in Township 30-23? [81]

A. We located land around in there. I could tell you if I went to the records where the locations are, if you want me to do that.

Q. You say you recollect finding some indications of oil sand in 26. Did you make any locations in that vicinity?

A. I don't think so.

Q. How far from that was your nearest location, according to the best of your recollection at that time?

A. Mr. Mills—You had better step to the map.

Mr. Lewers—No, if you please. Will you kindly read the question?

Mr. Mills—Any time you want to refresh your recollection from this map, you can do so. That is your right.

A. I don't remember now.

Q. By Mr. Lewers—Well, approximately. I am asking you to look back as near as you can and form a picture in your mind of the ground and your knowledge of the territory and state to me as near as you can how far from this indication in Section 26 that you have referred to your nearest location was.

A. There would be no use of my swearing to anything like that. I can get the records and show what it was at that time.

Q. I want your nearest recollection from your knowledge of the ground?

A. I haven't much recollection about it at the present time.

Q. Did you locate any other corner of Township 30-24 besides the northeast corner?

A. Not that I remember of.

Q. And did you endeavor to check that corner by the corner of any other township?

A. We checked a corner on 30-22. That would be the corner of 30-23 also. **[82]**

Q. Did you run a line across to get the two corners?

A. Oh yes.

Q. And did that line run north or south of the Miller & Lux ranch?

A. Which line have you reference to?

Q. The line that you ran across to get the two township corners that you found.

A. It would not be in the neighborhood of the Miller & Lux ranch between 30-22. In 30-23 it would be—

Q. I misunderstood you. I thought you went over to the corner that you have referred to in 30-24?

A. No sir.

Q. You never connected that?

A. No sir.

Q. Your recollection is, I understand it, as I understood your testimony before that, that you found the corner that was pointed out to you to the south or southeast of the Miller & Lux ranch?

A. That was my recollection of it at that time. I see it is wrong according to that map.

Q. That is, according to the map. But your recollection independent of the map is that you went southeast?

A. That was my recollection. But that was sometime ago when that occurred.

Q. And you didn't prepare this map Exhibit I, did you, yourself?

A. No sir.

Q. And had nothing to do with its preparation?

A. I don't think I did.

Q. And that map means nothing to you so far as

reviving your recollection as to anything you ever did?

A. No; that map is rather confusing to me, while it may [83] be correct in every way. In looking at it I become confused instead of enlightened.

Q. But you do have a mental picture, do you not, of being at Miller & Lux ranch and of going to a certain corner?

A. Yes sir. We had to do that.

Q. And going there with the foreman of the ranch?

A. Yes sir.

Q. And your recollection before you examined the map and became confused by what appears on it was that you went to the south or southeast?

A. That was my recollection of the matter.

Q. And independent of that map that is still your recollection, is it not?

A. Yes; that is the way it is impressed on my memory.

Mr. Lewers—That is all.

Whereupon the further taking of testimony herein was adjourned until Thursday, April 18, 1912, at 10 o'clock A. M., at the same place. [84]

HENRY M. THOMPSON, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I reside in McKittrick, Kern County, and am a bookkeeper by occupation. I was employed by J. B. Treadwell in the Kern River Field, from 1899 to the spring of 1901, and from 1901 to 1902 at McKittrick.

I was employed by Mr. Treadwell as the representative of the Southern Pacific Company's Oil Department. My duties consisted of keeping the books of all the accounts, the time and oil reports. My employment did not cover anything except the transactions of the Oil Department of that company. I had nothing to do with the freight business or the passenger business of that Company. When I first went to the Field they were just starting the oil business and I was helping over the lease in all kinds of different work until we got started and then I commenced keeping the books. I went out on the 28th of September, 1899, I think it was. They were just starting into the field and had no buildings and I assisted in any manner I could until the offices were built. I know F. J. Sarnow and I. M. Anderson, the two gentlemen who testified yesterday. The names of both of those gentlemen appeared on the books of the Company. F. J. Sarnow's name appeared as foreman of the McKittrick lease—the Southern Pacific Company's lease at McKittrick. He was foreman during those times, while I was at the Kern River Field as well as at the other place. Mr. Anderson occupied the position of driller in the McKittrick Field under F. J. Sarnow. Mr. Treadwell was manager of the Oil Department, so he informed me. Mr. Treadwell took supervision over the entire field. He gave orders as to what drilling was to be done, and what supplies were to be bought. He never paid any attention to the hiring of the men; that was left to the foreman. The foreman of the Kern River lease was [85]

L. G. Sarnow, the party who testified in this case. The foreman on the other lease was F. J. Sarnow. While I was bookkeeper, oil was produced both in the Kern River and the McKittrick Fields. The oil was shipped in cars over the Southern Pacific Co.'s Railroad. I can't say for what purpose the oil was used, but the engines loaded at McKittrick and they always filled their tanks at the Kern River Field from the oil that was produced on leases or oil that was purchased. None of the oil produced on these leases was ever sold to any other concern other than the concern operating the Southern Pacific Railroad. My books show no receipts. Everything was expenditures. The expenditures covered the employes of the lease, that is, the drillers, tool dressers, roustabouts, teamsters and other men employed on the lease. No freight charge was paid for shipments of oil. The supplies, that is, the tools and implements, were obtained in the following manner. Small bills of goods at first were ordered by J. B. Treadwell from whomever he wished to buy. Afterwards we were ordered to purchase through the purchase and supply department of the Southern Pacific at San Francisco. R. P. Schwerin was at the head of that Department. I always sent vouchers for all bills that came in and sent a report each and every month of the term accounts and also of the oil shipped. If I am not mistaken, those reports were sent to the purchase and supply department, of which Mr. Schwerin was the head. While I was in that employment, I had occasion to travel on the Southern Pacific Railroad. I

had what was called a rate ticket, that is, a reduced fare of one cent a mile. I applied to Mr. Treadwell for the rate ticket and he gave me an order to Mr. Burkhalter, the Division Superintendent of the S. P. at Bakersfield. His office was at East Bakersfield. The other employes of the oil department travelled some on passes and some on rate tickets. It depended entirely on what business they were on. If they were on business of the Oil Department, [86] they travelled on pass over the railroad lines of the Southern Pacific Railroad. In other words, so far as the privilege of transportation was concerned, the employes of the Oil Department were treated the same as employes of the operating department of the railroad while traveling. As stated by Mr. Anderson and Mr. Sarnow, I deducted fifty cents a month from each employe of the Oil Department while I was keeping the books there. I don't know what was done with that fund. My books merely showed that it was taken from the payroll. The funds with which the expenses of the Oil Department were paid came from San Francisco from the Treasurer of the Southern Pacific Company. Sometimes Mr. Treadwell would order money to be sent to Bakersfield, to the bank of Bakersfield, where we kept our deposit. Sometimes he would write letters. Sometimes he would mention the fact that he was short of funds while some of the head men were down in the field from whom he could order money. Over in McKittrick they had more than one place from which they obtained oil. There was the south end lease, as it is

known out there,—the S. P. south end lease, and the S. P. north end lease—about a distance of three miles apart. My impression is that a portion of the south end lease was on Section 20 and a portion of it on Section 29, in Township 30 South, Range 22 East. I don't know what section the north end lease was on at McKittrick. During the time I was in the Kern River Field, Mr. Treadwell's headquarters in the field were at the office. He was not there all the time. Sometimes he was in Texas and then in San Francisco and down there quite often. When he was out there he went out every day in his buggy in one direction or another. Mr. Treadwell would lease lands. He would put the price on lands, that were supposed to be oil lands; a price on all of it or the royalties, if it was leased, with a bonus, if there should be one. He had charge [87] of that for the Land Department of the Southern Pacific. Mr. Jerome Madden was head of the Land Department of the S. P. If there was an application placed with the Land Department for a lease or purchase of certain pieces of land that were presumed to be oil land, it was referred to Mr. Treadwell by Jerome Madden or the Land Department. Applications were sent to Treadwell on which he placed a price per acre of this land and also placed the amount of royalty, the number of wells that were to be drilled during a certain period of time, and what bonus, if any, was required. Mr. Treadwell placed that on these applications and returned them to the Land Department. All I had to do with regard to these actions of Mr. Treadwell was writing the cor-

respondence in regard to it. If Mr. Treadwell was not in the field at the time, he quite frequently left with certain sections and certain portions of sections—he would leave orders with me what bonus, what price per acre, what royalty was required, and should an application come in during his absence I could fill out the application and return it to the Land Department. I did it, I believe, on one or two occasions. There were quite a number of applications received by Mr. Treadwell; I should say fully fifty, while I was in the Kern River Field, and each one of those took the course that I have indicated. They came first to Mr. Treadwell from the Land Department, of which Mr. Jerome Madden was manager, and they were referred to Mr. Treadwell, and he would make his notations as to what should be obtained, or the provisions that were to be put in the lease; and when that was done they were to be sent back with his recommendation to the same Land Department. This was all done by correspondence. The correspondence would be placed in envelopes marked "railroad business" on them and we would take these to the train and the trainmen would carry our mail. We had a quite a number of maps of different sections of the country and if there was no record of a particular [88] piece on the map, Mr. Treadwell would make an investigation. This was the way in which he got his data from which he made these recommendations that were forwarded to Mr. Madden. He had quite a number of maps and they covered the whole oil region in Kern County in general. They were kept in

his office at Kern River. He had maps of townships; then he had section maps; quite a number of those just of the section. The maps were inked off at different sections stating just what was on that certain piece of land, and there were other data at the bottom in writing stating what the different marks on the maps meant. These maps were annotated. I didn't see any agricultural qualifications or characteristics noted on the maps at all. Mr. Treadwell had nothing to do with the agricultural features of the land. His business was only with the oil land. The name of Charles W. Eberlein is very familiar to me and I believe he was with the Land Department. I think there was correspondence that passed between the offices with his name signed to it, but I can't be positive as to that. That is the same Land Department of which Jerome Madden was at the head. Some of these applications were for the purchase of lands outright and some for leasing. The applications read for purchase or lease or both. None of the leases I referred to were executed by Treadwell, to my knowledge. That was done in San Francisco at the Land Department. The lands to which these applications referred were the railroad lands, the odd-numbered sections. Mr. Treadwell's approval of the application for the purchase or lease was required before the Land Department would execute such purchase or lease. It was absolutely left to him. I remember one letter written by Mr. Treadwell to the Land Department recommending withdrawal of certain sections that he thought were

good oil lands, that they could use themselves, but what those sections were I cannot name. That was all in the Kern River Field. By "themselves" I mean the Southern Pacific. Mr. **[89]** Treadwell was engaged in no other business that I know of other than in the oil business in a representative capacity for the Southern Pacific Company or the Railroad Company. He confined his time exclusively to the oil business of the S. P. Company. I have heard Mr. Treadwell speak of Mr. Eberlein as he would speak of most every one of the men connected with the different offices. No charge was made on the books for oil that was used by the railroad in the operation of locomotives or anything of that kind. There was just a report of the amount of oil that was shipped, the number of cars and the number of barrels to each car. This report was sent to the San Francisco office. I know Mr. H. E. Huntington and Mr. Kruttschnitt and Mr. Hayes and Mr. Hood. H. E. Huntington was president of the road; Kruttschnitt was the General Manager; Charles M. Hayes was President after Mr. Huntington, and Mr. Hood was the Chief Engineer. I have seen Mr. Kruttschnitt at the Kern River Field two or three times and Mr. Huntington only once, to my knowledge. I never saw any of these men at McKittrick. Mr. Treadwell drove these men around over the S. P. lease and then drove them over the lease nearby on one occasion that I remember of. They went to the Thirty-Three and Imperial to examine the pumping station that the S. P. had on that lease. They went on a tour of inspection, but all

these gentlemen were not there at one time. I know Mr. Bienenfeld. He was a surveyor for the S. P. I met him in the Kern River Field and at McKittrick and Bakersfield. When I met him he was a surveyor for the S. P. He and Mr. Burkhalter purchased a piece of land from Mr. Treadwell, or leased it, and with a bonus of $1250, if I am not mistaken. That was one of the applications made to the Land Department and referred to Treadwell. I knew Josiah Owen and E. T. Dumble, the geologist, by sight. I saw them around McKittrick prior to 1904. They were out driving in the Southern Pacific buggy. I don't know what they were doing. I don't think I ever [90] saw them both at one time in the same buggy, but I have seen them each in that buggy at different times. I would see them going in most all directions, driving through McKittrick, first one way and then another, north, east, south and west. I don't know in what capacity they were employed. I have seen them come down off the hills from the Southern Pacific lease. Dr. Schaefer was the Southern Pacific physician and surgeon in that locality at that time.

CROSS-EXAMINATION OF HENRY M. THOMPSON.

By Mr. Lewers:

Q. I understand, Mr. Thompson, that you were employed both at the Kern fields and at the McKittrick?

A. Yes sir.

Q. Did you change back from one place to the other from time to time, or did you spend quite a

considerable period at one place and then go to the other?

A. No, I would go about the first of the month or anywhere from the first to the fifth to McKittrick and spend two days, sometimes, and a little longer. At that time we only had two trains a week from Bakersfield to McKittrick. I had to go out on one train and come back the next, which was two or three days later, and take care of the books out there and then come back to Kern River, and remain there the balance of the month. Before that Mr. Sarnow used to send in the reports to the Kern River office—all bills, all time sheets, all oil reports, were sent in to me and I made out the same at the Kern River office and forwarded it to San Francisco to the San Francisco office.

Q. Up to what time did this practice that you have mentioned continue? **[91]**

A. I think about six months before I went to McKittrick.

Q. In what year was that?

A. That was in 1900.

Q. Do you mean that Mr. Sarnow sent there reports up to 1900?

A. Well, it was later than that. It was in possibly the fall of 1900 before I commenced going to McKittrick every month.

Q. Then after that you kept the books at McKittrick yourself?

A. Yes sir; I kept the books at McKittrick. I would go out the first of each month and look them

over, at least, and I would take the time sheets and send my reports to the office.

Q. You would be in McKittrick two days each month?

A. Yes sir.

Q. And the balance of the time you were in the Kern field?

A. Yes sir.

Q. How far was the lease in the Kern fields from the lease at McKittrick, approximately?

A. How far from the Kern River to McKittrick?

Q. Yes sir?

A. Fifty-four miles.

Q. How many leases did the Southern Pacific Company have at McKittrick during the time you were employed as bookkeeper?

A. When I first went to McKittrick, one only. The second one was established soon after I went to McKittrick.

Q. That is what was known as the North-end lease?

A. Yes sir.

Q. You had a South-end lease first?

A. The South-end lease first.

Q. Do you remember on what sections those leases were?

A. It is my impression that it was on a portion of 20 and [92] a few derricks were over on 29, if I am not mistaken.

Q. From whom did the Southern Pacific lease that ground, if you know?

A. I can't say who the Southern Pacific leased from.

Q. Didn't you have any information as to who the landlord was?

A. That was not in my department at all—the leasing.

Q. Do you know whether it was leased from any oil company?

A. I can't say.

Q. Did you ever hear anything about the Buena Vista Oil Company?

A. I have.

Q. Do you know whether the Buena Vista Oil Company held a lease on that same ground?

A. I have heard that they did.

Q. Did you hear that at the time?

A. I don't know whether it was that time or not, or since.

Q. Didn't you hear at that time who owned the ground?

A. I heard that Treadwell owned the ground.

Q. Individually?

A. No; holding it for the Southern Pacific, as the rest of the land that was in Treadwell's name.

Q. Was the lease in Treadwell's name?

A. No; I can't tell you that.

Q. Did you ever hear of Treadwell giving a lease to the Southern Pacific Company?

A. I never did. I never heard of any land being in Treadwell's name, but I knew it was in Treadwell's name from—the Southern Pacific land.

Q. Was this lease known as the Southern Pacific South-end lease at McKittrick in Treadwell's name?

A. I can't say positively; no. **[93]**

Q. Was the land on which the lease was in Treadwell's name?

A. Not that I know of. I can't say. It may have been and may not. I paid no attention to any leases. That was not in my line.

Q. Did you pay any attention to the ascertainment of the character of any of that land yourself?

A. No sir; not personally.

Q. You had nothing to do with it?

A. I had nothing to do with leasing the land at all. That was not in my department.

Q. On what sections were the leases in the Kern fields?

A. On Section 3.

Q. All on one section?

A. Yes; all on one section.

Q. From whom did the Southern Pacific lease that land?

A. That came from the government, according to my understanding. Section 3 is an odd section.

Q. They had to lease from the government?

A. I understand it was a patent from the government.

Q. To the Southern Pacific Company?

A. I don't know whether it was the Southern Pacific Company or the Southern Pacific Railroad.

Q. The question is from whom did the Southern Pacific Company hold its lease.

A. That I can't say. I never saw the lease, nor did I have any means of finding out.

Q. Did you ever hear who the landlord was?

A. I have heard that it belonged to the Southern Pacific Railroad Company.

Q. That is Section 3 in the Kern field?

A. Yes sir. **[94]**

Q. You didn't hear that Section 20 at McKittrick belonged to the railroad company?

A. No sir; I didn't hear anything about that.

Q. Did you carry any account of royalty or rentals paid on the lease at McKittrick?

A. I never carried royalties on my books—money paid to anyone for any sections.

Q. Do you know whether any such accounts were kept anywhere else?

A. I can't say. I don't know.

Q. Isn't it a fact that your books were merely for the local expenditures in carrying on the actual oil work?

A. That was all that I claimed that they were for.

Q. Your books covered merely local expenditure? Is that correct?

A. Yes; my books only carried the local expenditures. That is, for payments and for employees. I believe I kept that. That is about the only thing they had to show. The oil that was produced there I kept no record of that on my books, for the simple reason that the report was made to send to the San Francisco office on the first of each and every month.

Q. Report of what?

A. Report of oil shipped to the Southern Pacific Company—Southern Pacific Railroad Company.

Q. To the Southern Pacific Railroad Company?

A. It was delivered to the Southern Pacific Railroad Company. I had standing orders to deliver oil to the West Oakland yards every Tuesday and Thursday, one car each day, to Mr. — I can't call the gentleman's name now—he was superintendent there for a time of that division. They were billed to him.

Q. Do you mean to say that these shipments were made by the Southern Pacific Company to the Southern Pacific Railroad [95] Company?

A. In this way: They were shipped to the superintendent of the Southern Pacific Railroad Company.

Q. Who was superintendent of the Southern Pacific Railroad Company at any point during your employment?

A. At the West Oakland yard—I don't remember who it is now that it was shipped to, but that order came from Mr. R. P. Schwerin by telegram "Ship to West Oakland yard," name of the party, and he was the superintendent, if I am not very mistaken, of that division,—"Ship on Tuesdays and Wednesdays one car of oil, without fail."

Q. Then from what do you draw your conclusion that this man was superintendent of the Southern Pacific Railroad Company as distinguished from the Southern Pacific Company?

A. I didn't know that there was a difference between them.

Q. That is what I am coming at. Then you were

not aware at that time that there was a distinction between Southern Pacific Railroad Company and the Southern Pacific Company?

A. No sir; I always considered that it was the Southern Pacific Railroad Company that owned the oil. I never have been able to get it through my head, while I was with Mr. Treadwell, why there was a difference between Southern Pacific Company and Southern Pacific Railroad Company.

Q. Then you never have understood that there was a distinction between the two?

A. I knew there was a distinction, but I couldn't see the difference.

Q. Well, it must have seemed to you peculiar that the Southern Pacific Company made a lease in Kern fields on its own lands?

A. Mr. Treadwell spoke of it as the Southern Pacific Company. **[95½]**

Q. Were you not aware at that time that the Southern Pacific Railroad Company was the original company to whom the land grant was given, and that the Southern Pacific Company was a later company operating not only the lines originally owned by the Southern Pacific Railroad Company, but the lines of the Central Pacific Railroad Company and other lines?

A. No sir: I did not.

Q. Now, having that in mind, can you now state whether you had any information or data in your possession with reference to the lease in the Kern field showing that it was leased by the Southern

Pacific Railroad Company to the Southern Pacific Company?

A. No sir. I have no data of that kind.

Q. Did you ever hear anything about that?

A. I never heard.

Q. Then, at the time when you were acting as bookkeeper you never had in mind the relations between these companies? Is that correct?

A. I only had it Southern Pacific Company. That was told me by J. B. Treadwell. But I didn't know there was a difference, and it was quite awhile after that before I ever knew that there was really a difference between Southern Pacific Company and Southern Pacific Railroad Company.

Q. At that time you were not aware of the difference?

A. I was not aware, as orders would come from the purchase and supply department of the Southern Pacific Railroad. Of course the impression was that it was all billed to them. I was working for them and I applied to them for passes.

Q. You handled a great deal of correspondence while you were acting as bookkeeper, did you not?

A. Yes sir.

Q. I show you government's Exhibit I and ask you to [96] examine that carefully, particularly the printed matter on that envelope, and state whether or not the stationery you used was similarly marked.

A. Yes sir. I think it is the same thing.

Q. That is "Southern Pacific Company"?

A. Yes sir.

Q. And it was your understanding, was it not, Mr. Thompson, at the time when you were there as bookkeeper that the oil that was being produced from those leases was being used in the operation of engines on the lines of the road?

A. The Southern Pacific Railroad; yes sir.

Q. That is, whatever company was operating the lines was using the oil? That is your understanding?

A. How is that?

Q. That is, whatever company it was that was operating the lines and running the trains was using the oil?

A. Yes sir.

Q. And you did not differentiate in your own mind at that time whether it was the Southern Pacific Railroad Company or the Southern Pacific Company that was operating the line?

A. I always supposed it was the Southern Pacific Railroad Company that was operating it, though it was called the Southern Pacific Company.

Q. That is, you understood it was called the Southern Pacific Company?

A. It was called the Southern Pacific Company; yes sir.

Q. And the stationery you used was marked—

A. "Southern Pacific Company".

Q. You understood, did you not, that Mr. H. E. Huntington was president of the Southern Pacific Company?

A. Of the Southern Pacific Railroad Company.

Q. From where did you get your information that

he was [97] ever connected in any way, shape or form with the Southern Pacific Railroad Company?

A. I don't know. It was always understood that Mr. H. E. Huntington was president of the Southern Pacific Railroad Company.

Q. Who did you understand was the president of the Southern Pacific Company?

A. Mr. H. E. Huntington. I thought it was one and the same thing.

Q. You didn't know the difference?

A. I didn't know the difference. I didn't know that there was a difference that you speak of.

Q. Do you know who is the president of the Southern Pacific Railroad Company now?

A. Mr. Sproule.

Q. And who is the president of the Southern Pacific Company?

A. I think Mr. Sproule is too.

Q. He undoubtedly is of the latter company.

A. Then he would be president of both companies.

Q. No, that doesn't follow. That is not the fact.

Mr. McCormick—Literally not; in reality, yes.

Mr. Lewers—Literally not and in reality not. And you say that occasionally—well, frequently—I believe you said—as many as fifty times or more communications came to Mr. Treadwell while you were acting as bookkeeper, from Mr. Madden or the land department of the company with reference to applications that had been made to lease or purchase or to lease and purchase. Is that the fact?

A. That is the fact; yes sir.

Q. And when any such application was referred to Mr. Treadwell, you say that he made a report on that application as to [98] whether or not it covered any land that might be valuable for oil for the company?

A. Invariably he did; yes sir.

Q. And the only instances you know where he did make such reports concerning sales of lands or leases, were instances where he received a communication from the land department and reported on it? Is that correct?

A. Yes sir.

Q. Do you know of his making any reports or examinations of the land as to its oil character or as to its containing gold or silver or any minerals except in connection with such applications?

A. Do I know of his making an investigation?

Q. For the company.

A. For the company?

Q. Yes sir.

A. Not to my knowledge.

Q. Have you ever known of his making any investigation of the character of any land with respect to applying for a patent for that land?

A. No; I don't think I ever knew of his making an investigation of that. Not to my knowledge, although he was out constantly investigating land. I don't know for what purpose.

Q. Isn't it a fact that Mr. Treadwell had interested himself in various oil properties individually on even sections and elsewhere?

A. Not to my knowledge.

Q. You never knew of his interesting himself individually?

A. I don't know of any personal interest he had.

Q. He was looking out for the development of oil to run the engines of the road?

A. He was looking out for the development of oil for the [99] Southern Pacific.

Q. That is, he was looking after what you might call the development, industrially, of those oil properties that the company might own or lease? Isn't that the fact?

A. Well, yes; he was. And he also—I have heard him say—he was always looking out for any oil lands that the Southern Pacific owned that could in the future be turned to their use by being developed.

Q. That is, at that time, it is a fact to your knowledge, Mr. Thompson, is it not, that the company had begun to seriously consider using oil on its entire system for fuel?

A. Yes sir; about that time.

Q. And Mr. Treadwell was engaged in an effort to develop sufficient oil for that purpose, was he not?

A. Yes, I presume he was.

Q. That is, to your knowledge he reported to the operating officials of the company, did he not?

A. Well, he was there to attend to all the oil business, and produce all he could.

Q. Perhaps you do not understand my quetsion. Did he not report to Mr. Kruttschnitt?

A. Yes sir; he constantly reported to Mr. Kruttschnitt.

Q. And Mr. Kruttschnitt was in charge of the operating of the road?

A. Yes sir; general manager.

Q. Now, you say that these communications that you have referred to with reference to the land being leased or sold, were sent from the San Francisco office to Mr. Treadwell?

A. Yes sir.

Q. Were all of those that you are familiar with sent by Mr. Jerome Madden?

A. Not in person. **[100]**

Q. Or from his office?

A. His office—oh, there was frequently letters from Mr. Kruttschnitt in regard to the oil business.

Q. I am speaking specifically with reference to the leasing of other individuals.

A. Well, from Mr. Madden's office.

Q. Do you know when Mr. Madden severed his connection with that office?

A. No, but it was after I left the S. P. He was still with that office, I think, when I left.

Q. And you left when?

A. In 1902.

Q. And were you familiar with what was done in connection with any of the oil lands of the company or any leases held by the Southern Pacific Company after the time you left its employ?

A. Do I know what was done with the leases after I left?

Q. Yes.

A. Absolutely nothing.

Q. Then your testimony does not go beyond the period of 1902?

A. I will retract that. I can't be positive whether it was 1902 or early in 1903. After that I know nothing about their transactions in the oil department or any other transactions of the railroad.

Mr. Lewers—That is all.

REDIRECT EXAMINATION
OF
HENRY M. THOMPSON.

By Mr. McCormick:

Q. Were these transactions about which you have testified relating to the applications for lease or purchase of these [101] lands on odd-numbered sections, in any way entered upon the books of the oil department which you kept at Kern River or McKittrick?

A. No sir; I had nothing to do with that.

Q. By Mr. Lewers—There is one other question that I over-looked. You were asked, Mr. Thompson, about a surveyor in the employment of the Southern Pacific Company by the name of Bienenfeld.

A. Yes sir.

Q. You say he and Mr. Burkhalter leased a piece of land. Do you remember where that was?

I think it is right in where the Standard Oil Company have their "tank city" now.

Q. It is in the Kern River field?

A. No sir.

Q. It was not anywhere near the Elk Hills?

A. Oh, my, no. Fifty miles from the Elk Hills.

Q. By Mr. McCormick—With reference to these car-loads of oil that were shipped to the Oakland yards and other places of that kind that you have testified to, you don't know what use they put those to?

A. No sir.

Q. You don't know whether they sold them or used them in their engines or what they did?

A. I have no knowledge of what they did with them at all. **[102]**

B. K. LEE, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am engaged in the oil business at McKittrick, where I have lived since September, 1900. I have been engaged in that business ever since that time continuously. I was sent to McKittrick by the Belmont Oil Company to take charge of their property at McKittrick. I am familiar with oil lands in the vicinity of McKittrick. I have had no oil experience outside of California. I know what an oil outcrop is, or sand outcrop, or seepage of asphaltum. While I was in that country I observed oil sands, outcrops and seepages. The nearest seepage to the property that I was in charge of was a tar spring on the southwest quarter, Section 12, Township 30 South, Range 21 East. I also observed on Section 13 of the same township, dry oil sand and asphaltum. Section 18, 30-22, outcroppings of sand —dry. And Section 18, 30-22. On Section 17 there was an outcropping. On Section 20, Section 29, Sec-

tion 28, Section 34, Section 35, of the same township, 30-22. On Section 2, 31-23, there was an oil seepage. On Section 21, 32-23, an outcropping of oil sand. Section 22, an outcropping of oil sand, in the same township and range, 32-23. Section 26, 32-23, on that line. I am also familiar with the oil sand cropping on Section 18, 29-21. In Section 35, 29-21; Section 36, 29-21, Section 8, 30-22. These are all dry oil sands. And Section 14, 30-22, an outcropping of sand. That is all I know of the outcropping of sand in that immediate vicinity. I observed these outcroppings shortly after I went to McKittrick. In November or December, 1900, I examined the strike of the outcroppings to the south and east from McKittrick beginning in 30-21, 30-22, and dropping down into 31-23, over into Township 32-23, because it had a bearing on some lands that my people owned. **[103]**

I made a personal examiantion. Some of those outcroppings are on the line of contact with the Temblor Range in the McKittrick formation. I am acquainted with what is known as the Elk Hills. There is a large group of hills lying north of what are known as the Buena Vista Hills. The trend of those hills is almost east and west, a little southeast and a little northwest. Their elevation is about 1500 feet at the point where I took the elevation; that is, on the crest of the hill. I don't know that it is the highest place, but it is along the line of the crest of hills. The crest of the hills runs a little northwest and southeast. I travelled about seven miles in those hills. I should judge that it would be about twelve

miles from the gap in the railroad crossing to Buena Vista Lake. I would estimate that the width of the group of hills from flank to flank, north and south, is about five miles. The surface is a sand, clay, some little shale shows. The general formation is rolling. In some places it is broken by gulches and the land is pretty steep in places. I went over the crest of the hills for seven miles. I went some where in the neighborhood of the southeast corner of Section 26, Township 30 South, Range 23 East, and went up to the southwest corner of Section 36, Township 30 South, Range 23 East, and examined some lands owned by Mr. Buffington on the east side of the Section. I found the township corner there. The reason I went into the hills was because Mr. F. J. Carman, with whom I was associated, wrote me from Bakersfield to go in there and make an examination. That was in the latter part of August, 1909; and he furnished me with a little topographical map to guide me, and said if I found conditions as represented, to report, and also to find out if I could follow out any anticline from there to the northwest. I had observed indications of an anticline towards the western end of the hills in Section 14, Township 30 South, Range 22 East. It is immediately along the railroad [104] track where there is a trestle. The railroad crosses the bed of a wash just to the east of the anticline. There is a natural wash or gulch or cut there where the railroad goes through. The anticline is a well defined fold about six to eight hundred feet across the top of it. It exposes gypsum, clay and sand of different char-

acters, and on the south side of the anticline, below to the south and west, the pitch would be about twenty-five degrees. On the north side it was much more precipitous, perhaps forty to forty-five degrees. I first observed that anticline when I went into McKittrick on the train. The train was held up there and we had to stop every now and then to get up steam to make the balance of the distance and I was naturally curious and we walked the last mile into McKittrick that time and I had a chance to observe a few things. I saw the natural fold from the erosion. It is very plain. Its trend is northwest and southeast in the general course of the hills. That is the evidence on which I went in to Section 36, to follow up and determine whether that anticline extended into the hills. I wanted to know if there was an anticline there, and it was on the evidence that I observed when I first went into McKittrick in 1900 on the western end of the anticline that I went back into Section 36, Township 30 South, Range 23 East, for the purpose of determining whether it extended back into the hills. The hills are generally rolling. There is some erosion, but not greatly eroded as you would suppose from the surface formation—the sand and clay. I have observed other hills around the country in different places and these hills, from my observation, are at the present time in about the same condition as they were in 1900. There has been no change in the hills from the time I made the examination in 1900. Sometimes there is much rainfall there in the spring of the year. The climate is a good

deal of a desert nature; it is a hot climate and very little [105] rainfall. There is no water up in the Elk Hills that I know of. I can't say that I know of any water in Township 30 South, 23 East, or in the neighboring sections. I never saw any water in there and very little vegetation. What little vegetation there was consisted of sagebrush and some grass. The sagebrush was sparse. The hills are rather barren. There is a short grass on the slopes in the spring of the year. In the hot season other than the sagebrush there is dry dead grass. The land on the crest of the hill, or on 30 South, 23 East, is not susceptible of agriculture and has value only for grazing. I don' think it has any value for raising crops. I was acquainted with Mr. Owen, the geologist. He worked for the S. P. Company in the capacity of a geologist. I saw him at McKittrick quite frequently in 1903 and 1904. In 1903 I had a talk with him about the anticlinal evidence in Section 14, Township 30 South, Range 22 East. In the spring of 1903 I went to Asphalto and while there Mr. Owen drove up and he asked me if I knew where the pits and shafts were that they got the asphalt from on Section 27. I said I did. He asked me if I would go with him and I did. That was not the first time I talked with him. In this last conversation I asked him if he came in from Section 24, in Township 30 South, Range 22 East. There is an old derrick up there. That is in the Elk Hills. I asked him if he had observed the anticline in Section 14. He told me he had and that it was a strong one. That is all the conversation we had in

reference to that anticline. The first time I saw him was early in 1903. He came to my camp. He asked me if my name was Lee and told me his name was Owen. He said he understood that I knew the corners of the country around there pretty well and would I show him the west quarter section line of Section 11, Township 30 South, Range 21 East. I told him he was a stranger to me and I had been troubled by "Scrippers" and "jumpers" and that I didn't **[106]** care to show anyone any corners unless I knew what business he had there. He told me he was in the Geological Department of the S. P., under Prof. Dumble, and he meant no harm to me whatever. I rode up and showed him the corner on top of the hill. After I made a report to Mr. Carman, referred to in my testimony, he bought 159 acres of the lands which I investigated in the Elk Hills. This was in Section 36, Township 30 South, Range 23 East. That purchase was made for mineral possibilities for oil. The formation of the Elk Hills which I examined in Township 30 South, Range 23 East, has more clays and sand exposed than the country immediately adjoining to the McKittrick Oil Fields. I recommended the purchase of this land for its oil value. Mr. Carman at this time was seeking land for the mineral and oil possibilities. I have met Mr. Dumble. I have seen him around McKittrick eight or ten times, perhaps. When I saw him he was driving in McKittrick, usually with Mr. Owen. He would drive between the town and the oil lease. When he was there he would stop with the Kern Trading &

Oil Company. He and Mr. Owen used the K. T. & O. Team. I had a conversation with Mr. Owen with reference to the Buena Vista Hills. He told me it was a great gas country. He told me he had been around the hills, around the lake, that it was great gas country; that at different places he could put his bar into the ground and remove his bar and get a flash of light. He told me of one place in particular in Section 11, Township 32 South, Range 24 East. He mentioned that as the oil sand cropping. He said he had found evidence of gas in the hills in eleven different places. He said that he could put a crowbar in and withdraw it and could then get a flash by lighting a match. Section 11 is near the Honolulu Oil Company's property. Since those examinations I have been over the country two or three times and have confirmed my opinion that the anticline spoken of is well defined. **[107]** I have not dug into it as it was not necessary. There are asphaltum indications on Section 14, Township 30 South, Range 22 East. On the north flank of the anticline on this section there is a bed of coarse gravel. That is on the side of the cut. The water from the hills runs over it and gives it a yellow color. A superficial examination shows nothing but yellow gravel, but when you break into it it is covered with dry oil. I have heard of the Eight Oil Company. They have locations in there now in Township 30 South, Range 23 East, and are now operating them.

CROSS EXAMINATION OF B. K. LEE.

I was connected with the Belmont Oil company

from the 6th day of September, 1900, untill the 6th day of May, 1905. I had no oil experience before 1900, but since that time I have devoted almost my entire attention to the oil business along the prospecting lines particularly, and some on development. I have had some practical experience in supervising and carrying on drilling operations. I went there in September, 1900, and on the 28th day of December our lessor commenced operations, drilling on the Kern King Well on Section 21. I was the agent of the land at that time. They drilled a well into the oil sand about the time the slump came in the price of oil along about June, 1901. They were finding some difficulties and did no more work on the well. From then on until the winter of 1903 things were very quiet. In the winter of 1903 we began operations on our own original lease in charge of the Belmont well on lots 5 and 6 and Section 11, Township 30 South, 21 East. We finished that well at a depth of 945 feet and it was a very good well, pumping about 80 barrels a day. The price of oil would not justify us [108] to go to the expense of putting in a pipe line and we did no more on the property until 1905, when I went to work for the San Francisco-McKittrick Oil Company and the C. & J. Oil Company. With those companies I have had practical field experience in sinking wells. Prior to the time that I ceased working on the Belmont Oil Company I was familiar with the general oil conditions throughout that territory. The deepest well up to the 1st of January, 1905, in that country was 2250 feet, I think. It was either on the east side

of Section 1, Township 30 South, Range 21 East, or on the west side of Section 26, Township 30 South, Range 22 East. It was the McKittrick Oil Company's well; that was the deepest well. The average depth of wells in that field was 800 or 900 feet up to 1200 feet. The other was an exceptional well. I found no oil sand in any portion of Township 30 South, Range 23 East. In 1909 I examined the east side of Section 36 in that township for Mr. F. J. Carman and he purchased it on my recommendation, paying $20.00 an acre for it. I have not been on that particular piece of ground since. I have been on Section 36, however. I don't know whether Mr. Carman has ever done anything on the land. I followed the anticline right through from there to the cut and drove a team right across, a distance of about seven miles. On that trip across that township, the evidences of the wall of that anticline on that section 30 is a very strong pitch to the north. I don't know the section lines—but around in that general course. By driving back and forth you can find and trace the pitch both to the south and to the north. The pitch to the south is a little harder to find than the one to the north. It is a little more moderate to the south. The north pitch was a little more precipitous—northeast, I should say. I found the walls of the anticline to the southwest in five or six places at intervals from half a mile to a mile. Beginning from the railroad cut and crossing over, there would be [109] stretches where I wouldn't find the anticline for a mile and different places where I would find it in consecutive

gulches, maybe within a quarter of a mile. It was not nearly as well marked as that to the northeast, as the erosion had been mostly to the northeast. In that territory I found no oil sand at all. I was looking for anything I could find. I don't pose as an expert; only as a prospector. If a man sent me out to find a certain condition, I can tell him. The western end of that anticline from which I started shows very clearly near a trestle in a railroad cut in the Elk Hills. At that point both flanks or walls of the anticline practically show. The southwest curvature is a very moderate anticline, probably twenty-five degrees, but it plunges underneath the surface of the wash coming from the crest. You can get the pitch there. The strike of the anticline is towards the southeast. I found no indications of that anticline plunging at any point. As far as I could make a superficial examination, the axis of the anticline is practically uniform. I was engaged one day in that examination. I travelled by team. There were no roads there in 1909. I never went beyond the southeast corner of Section 36, Township 30 South, Range 23 East. When I went over to examine that land it belonged to Mr. Button. I found no gas indications on this trip. I never made any locations in my own name. Other than the occasion when I travelled across Township 30 South, Range 23 East, I never went into the Elk Hills. I once went into the southwest corner to locate a man that wanted to find a piece of ground in 31 South, Range 23 East, but otherwise I made no examination of the hills. During the time I was prospecting in

that country, I went practically over the whole country from Taft to Coalinga. At different times, when I had the time and opportunity, I would go out and prospect for information. I know the range of hills called the Buena Vista Hills. I went **[110]** over those, but not very extensively. At that time I confined my attention more to the main range. My headquarters were at McKittrick all that time.

REDIRECT EXAMINATION OF B. K. LEE.

I started out two or three times to make locations in Township 30 South, Range 23 East, but I found that the ground in that country was covered over one, two and three deep with locations by people who owned from eight to ten sections.

RE-CROSS EXAMINATION OF B. K. LEE.

The greatest activity was shown in that country in the matter of locating claims in the latter part of 1899 and the spring of 1900. During that time the country was plastered for miles. Not only those who were experienced in oil, but those who knew absolutely nothing about it, went in there and located the entire country. A number of these locations were made at the Court House at Bakersfield. I say this because in subsequent years I noticed where the ground was located in my immediate vicinity where no person had been in that day.

RE-DIRECT EXAMINATION OF B. K. LEE.

I did not mean in my former answers that all of the people who made locations there knew nothing about oil. There were some who did not, the same as in any mining country; that is names woud be put on

with others that did not know anything [111] about mining. I knew of no locations in Township 30 South, Range 23 East, until after the spring of 1901. The oil excitement began over there in 1899 and continued until the spring of 1901. A great many people flocked in there to investigate oil conditions. I was located at that time five miles from McKittrick on Section 11, Township 30 South, Range 21, and there was a good deal of excitement about the whole country. I don't know whether any people went into the Elk Hills to locate during that excitement, I won't say that there were none, but I don't know of any of my own knowledge. I know of a well drilled recently in Section 30, Township 30 South, Range 24 East. It was brought in by the Associated Oil Company. I was at that well last summer. The Associated had a well on Section 26, Township 30 South, Range 23 East. It showed oil at the time I was there. I think they were still working on the well. I know the wells drilled on the south half of Township 30, Range 23 East. I know other wells that have strong gas showings on the south tier of the sections in Township 30 South, Range 23 East. That land is now known as oil land.

RE-CROSS EXAMINATION OF B. K. LEE.

Work was begun on these wells in Township 30 South, Range 23 East, in the year 1910. It was told in my hearing by men in charge of the work that oil was struck in the well on Section 30, Township 30 South, Range 24 East, at 2700 feet. I don't know if that well has produced. I have not seen the well

since. I don't know if the well on Section 26, in that same Township, produced any oil. I do not know whether or not it is now being worked. I do not know any well in that township or in the Elk Hills that you would call a paying well. I have not been there since, perhaps, August of last year. I saw an item **[112]** in the paper the other day that they began repairing those wells, but further than that I know nothing. There is no pipe line from McKittrick to those fields except for fuel supply and water has to be pumped into those hills to operate those wells from the Buena Vista Lake, which is quite an expensive proposition. In 1900, 1901, 1902 and 1903 it would require a great amount of capital to go in and operate there and I would not have considered it. I never thought of it at that time but if I had had the capital I might have considered it. Of course, when a man goes to sinking a well in new territory like that he does not anticipate going to any great depth. He finds that out after making his expenditure. I don't know what my state of mind would have been if I had to go to that depth under the conditions which existed prior to the 1st of January, 1905, in that territory. I was not looking for that sort of territory at that time. I was engaged in that time in work over in Township 30 South, Range 21 East. From 1901 to 1907 there was a very lax time and not very much interest taken in oil on account of the prices. There was no stimulus for a person to acquire more property than he had and that was the condition I was in at that time. I had all I could carry on.

J. I. WAGY, called on behalf of the plaintiff, having been first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION.

By Mr. Mills:

Q. You were sworn here by Mr. Longley?

A. Yes sir.

Q. You live in Bakersfield, I understand?

A. In Maricopa. **[113]**

Q. When did you first go into that field over there?

A. In Maricopa district?

Q. Yes.

A. In '96.

Q. Had you been in Kern County prior to that time?

A. I had been in Kern County since November, 1893.

Q. What brought you into that part of Kern County, Mr. Wagy?

A. I did the freighting there for several years from Bakersfield to Sunset district before the railroad was built in there.

Q. That is, hauling freight across there?

A. Yes sir.

Q. What road did you take to go from Sunset to Bakersfield?

A. Well, I followed the county road south and west from Bakersfield till I struck the plains east of the Sunset field, then almost a direct line across

the plains in a westerly or southwesterly direction toward Sunset.

Q. Was Buena Vista dry during any time that you were freighting there?

A. Yes sir.

Q. Did you ever cross the bed of the lake?

A. Yes sir.

Q. Did the road lead across it?

A. No; the road led several miles south of the lake.

Q. When the lake was dry, did your route carry you near the Buena Vista Hills or the Elk Hills in crossing the lake?

A. Right by the east end of the Buena Vista Hills, but not near the Elk Hills.

Q. You know where the Elk Hills are located?

A. Yes sir.

Q. Did you do any freighting through those hills. **[114]**

A. No sir; not at that time.

Q. Have you ever at any time?

A. Well, I have freighted five hundred tons of stuff out of there in the last ninety days.

Q. Through those hills?

A. Yes sir.

Q. What route did you take?

A. The material that I hauled out of there was on the south slope of the Elk Hills, and I hauled it across the Buena Vista Hills, most of it, to Maricopa.

Q. Did you ever make any locations in the Elk Hills for oil?

A. Yes sir.

Q. Will you kindly give the names and initials of your associates, so far as you remember them?

A. H. A. Blodget, W. E. Youle, Solomon Jewett, F. Roper, H. L. Packard, T. J. Packard, C. W. Lamont and N. C. Farnsworth.

Q. Now, the gentlemen whom you have named, were they in the first locations you made there?

A. Yes sir.

Q. Where were those locations made, Mr. Wagy?

A. Well, they were all over the Elk Hills in 30-23, some in 31-23, 30-24 and 31-24.

Q. How many sections of land in the aggregate did you locate?

A. Some fifty-odd sections, as I remember it.

Q. Were these all located for oil?

A. Yes sir.

Q. What caused you to locate the particular ground that you did locate?

A. I was crossing the hills there with a band of mules, and in coming down a canyon I discovered a seepage that seemed to [115] be an oil seepage; and I got down off my horse and examined it, and it looked very much like the seepages that I had seen in the Sunset district, and it interested me very much, and I called the attention of Mr. Blodget of the firm of Jewett & Blodget for whom I was freighting to the seeps, and then afterwards I took some of the sand into town to Mr. Blodget, and we discussed the advisability of locating it, and he said he would have his superintendent from the Sunset fields meet me over there to let him examine the ground, and he came

over to my place where I was farming—I was farming at that time on Miller & Lux's land right due north of the Elk Hills—he came over and stayed all night at my ranch, and the next day we went over in the hills and I took him to this place where the seepage was and he examined it and we rode around the hills adjacent there for two or three miles, and Mr. Youle said it looked pretty good to him.

Mr. Lewers—I object to what he said as hearsay and no opportunity given us to cross-examine Mr. Youle's statements.

Q. By Mr. Mills—Go right along.

A. He said it looked pretty good to him, and he believed it was worth spending some money on it, but that he couldn't determine whether that was an oil sweat or seepage or sulphur. But the formation looked pretty good to him, and he thought it was worth spending some money to try it and see.

Q. Is Mr. Youle whom you have mentioned the man who was foreman for Jewett & Blodget in the Sunset field and came up there?

A. Yes sir.

Q. Did he come as an oil expert to examine the seepage to determine whether to make locations there?

Mr. Lewers—Objected to as leading and suggestive.

A. Yes sir.

Q. By Mr. Mills—What date was it that you discovered this oil seepage?

A. I think as near as I can remember it was sometime [116] during the year 1900.

Q. And how soon after you discovered it did you inform Mr. Blodget?

A. Well, I can't say as to the exact date. It was perhaps two or three weeks. The first time I saw him afterwards.

Q. How soon after that did Mr. Blodget order his oil expert, Mr. Youle, over there to look at it?

A. Well, it was some time. Two or three months after that, before he came over there to look over the ground.

Q. To the best of your recollection did he come there to look at the ground in the year 1900?

A. Yes sir.

Q. How much time did he spend out there looking over it?

A. We were only in the hills a little more than half a day. We rode over there early in the morning and I think we got back to the ranch about two o'clock in the afternoon or 2:30.

Q. Who was in the party that rode over?

A. Just Mr. Youle and myself.

Q. Did Mr. Youle get down off his horse and make a detailed examination?

A. We walked over the country, through several sections.

Q. Did Mr. Youle determine at that time whether there was any anticline there?

Mr. Lewers—Objected to as calling for the conclusion of the witness as to the determination in the mind of another individual, and calling for hearsay and not the best evidence.

A. I don't remember his mentioning anything about the anticline.

Q. How extensive was this cropping of sand that you speak of?

A. Well, it was just a small outcropping in the bottom of the canyon and kind of on the side of a bluff in the bottom of the canyon.

Q. What section, township and range was it? [117]

A. It was on Section 32, 30-24.

Q. On the strength of that discovery did you discuss with Youle or anyone else the propriety of making some locations with a view of acquiring the lands for oil purposes?

Mr. Lewers—To which we object on the ground, first, that it is leading and suggestive and, second, that it calls for hearsay testimony.

A. Well, yes. We talked it over in a general way, and then afterwards Mr. Blodget called me into Bakersfield in regard to locating the property, and he made a proposition—

Mr. Lewers—I object to any statement of what Mr. Blodget said because it is not responsive, and on the additional ground specified in the original objection.

Q. By Mr. Mills—State what Mr. Blodget said.

A. He made a proposition for taking in a number of his friends and associates and locating the entire country there.

Mr. Lewers—I desire at this to give notice that I shall move to tax costs of all this hearsay testimony against counsel who is calling for the same.

Mr. Mills—Proceed.

A. The proposition was agreeable to me and we organized a company and procured surveyors who went in there and surveyed all of the hills there, and all of the unsurveyed ground, and mounded—built mounds at each corner and along the section lines and half section lines and quarter section lines, and then placed location notices on them.

Q. Were those location notices recorded with the recorder of that county?

A. Yes sir.

Q. Do you recall that there was any land in 30-23 unsurveyed at that time?

A. Yes, I think there was. **[118]**

Q. Was that some of the land that you refer to as having had surveyed?

A. Yes sir.

Q. Was all of that unsurveyed land included within the boundaries of the locations that you refer to—on the hills, I mean?

A. I can't be positive whether it was or not. There was some other parties came in there before we finished up and located six sections, and my best recollection is that they got some of the unsurveyed land too.

Q. You got all that you could?

A. We got all that we could; yes.

Q. Did your locations include the tops of the hills known as the Elk Hills as far as they extended?

A. Yes sir.

Q. Did you locate both odd and even numbered sections?

A. I would qualify my former answer a little bit. We didn't go to the east end of the Elk Hills. We didn't go but—on the north slope we went one mile east of 32, 30-24, and on the south slope we went perhaps a couple of miles further east.

Q. In 30-24?

A. Yes sir; in 30-24.

Q. East, you say?

A. Yes sir.

Q. But west you went as far as the hills extended?

A. Yes sir.

Q. That would include that part of the hills which is embraced in 30-23?

A. Yes sir.

Q. State whether or not the first location notices you had were printed notices or written notices. **[119]**

A. They were typewritten.

Q. And the second set of relocations that you made, in what were they?

A. I believe the second set were typewritten.

Q. Was there a third set?

A. On a portion of the land, yes.

Q. What were they?

A. I believe those were printed, but they were all signed on the ground. That is, the names were put on as the location notices were posted.

Q. Did you at that time regard the Elk Hills as oil territory?

A. I surely did or I would not have put in my time there.

Q. Did they include the lands embraced in 30-23, the top of the hills there, in the south half of the township?

A. Yes sir.

Q. Did Mr. Youle regard it as good oil territory?

Mr. Lewers—To which we object on the ground that it calls for the conclusion of the witness as to somebody else's mental condition.

A. We went in there on his recommendation as much as anything else.

Mr. Lewers—I move that that be stricken out as not responsive.

Q. By Mr. Mills—Was Mr. Youle at that time an oil expert in the Sunset field?

A. Yes sir.

Q. Was he regarded by oil men as a geologist?

Mr. Lewers—To which we object on the ground that it is vague and indefinite, not specifying who the oil men are, calling for hearsay testimony, and not the best evidence of the qualifications of Mr. Youle. **[120]**

A. He was generally considered a good, thorough oil man.

Q. And was in charge of all the properties there?

A. Yes sir; he was in charge of the Jewett & Blodget holdings.

Q. And they had extensive oil holdings at that time?

A. Yes sir; they had several hundred acres in the Sunset district.

Q. Do you know anything about the bringing in of that railroad from Bakersfield to McKittrick?

A. That was before I came to Kern county.

Q. Who surveyed the lands for you on the unsurveyed portion of the Elk Hills?

A. Mr. C. W. Lamont was one of the men, and we had another surveyor out there for several weeks, but I don't recall his name.

Q. Was that consultation and meeting of your associates and yourself with Mr. Blodget called after the report of Mr. Youle upon the oil possibilities of the Elk Hills?

A. Yes sir.

Q. And was it in response, if you know, to the report that he made?

A. Presumably so; yes.

Q. Do you know whether Mr. Blodget himself regarded the land that you located as good oil land?

A. I don't know of my own knowledge whether Mr. Blodget was ever on the land or not.

Q. He had been operating in that country, had he not?

A. He had been operating the Sunset district several miles southeast of that.

Q. Who had charge of the field work of this company for your associates?

A. C. W. Lamont. **[121]**

Q. What did you do in the way of developing? Did you make any roads or do anything of that sort?

A. Yes sir; I took my teams in there and built a road in from the north slope to near the center of Section 32, 30-24, and we built a house and a stable in there, and Mr. Lamont had a crew of men in there for several weeks digging shafts.

Q. Whereabouts were those shafts?

A. I can't say as to the location of those shafts, as I was not over the ground very much after he was in there with his crew of men.

Q. What year was that work done?

A. To the best of my recollection in 1901.

Q. Did people in the immediate vicinity around McKittrick and the oil fields adjacent know of these locations, to your knowledge?

Mr. Lewers—To which we object as calling for the conclusion of the witness as to what somebody else knew.

A. Well, there was quite a stampede of people came in there to relocate the following January after our first locations.

Q. By Mr. Mills—On account of the oil excitement?

A. Yes sir.

Q. And did they relocate any of your locations?

A. Yes sir; it was pretty well plastered before sun-up.

Q. Did they plaster any locations in 30-23 on your locations?

A. Yes sir.

Q. Now, in Section 32 of 30-24, did you notice any smell of gas?

A. I did at that point where I discovered the first seepage.

Q. State whether or not, if you know, the land you have **[122]** described as having located by you and your associates was generally known among oil men

and others around in that country, as valuable for petroleum.

Mr. Lewers—To which we object as calling for the conclusion of the witness, calling for hearsay testimony, and that it is vague and indefinite and does not ask for any definite standard or test by which the character of this land is to be determined.

A. Well, I can't say as to what the general opinion among oil men was.

Q. By Mr. Mills—You say there was a stampede in there?

A. Yes sir; but the locators that came in there were mostly Bakersfield people. I don't remember any of them that at that time were connected in the oil business in any way.

Q. You mean that none of the people that went in to locate lands were in the oil business?

A. No sir.

Q. When they located lands they got in the oil business, didn't they?

A. They were trying to.

Q. Were there many people out there during that year—the year of the stampede?

A. Oh yes; I should say there was a hundred different people out there, to my knowledge.

Q. Have you been over these lands pretty much yourself in the Elk Hills?

A. Yes sir; over every section.

Q. Have those lands any value for agriculture?

A. No sir.

Q. Is there enough rainfall generally there to raise a crop?

A. Not since I have been in the country. [123]

Q. And if there was enough rainfall, are the lands located topographically so as to raise a crop?

A. There would be small patches of it that would be, but generally speaking, no.

Q. Why?

A. It is too rough.

Q. What kind of a climate have they there?

A. It is rather a dry, warm, desert climate.

Q. Have the lands in the springtime any vegetation at all?

A. In ordinary years, yes.

Q. Sufficient to graze sheep?

A. Yes sir.

Q. How long does that last?

A. From sixty to ninety days.

Q. During the rest of the year is there any chance for sheep to make a living there?

A. If they didn't eat it all in the spring the dry feed would be good.

Q. Was there much money spent in there in perfecting those locations?

A. Yes sir; there was a considerable amount of money spent but as to the amount I couldn't say.

Q. Was it in excess of several thousand dollars in 30-23?

A. Yes sir.

Mr. Mills—Take the witness.

Mr. Lewers—How much is "several"?

Mr. Mills—"Several" would be more than one and possibly more than two.

CROSS-EXAMINATION
OF
J. I. WAGY. [124]

By Mr. Lewers:

Q. How much money was spent in 30-23?

A. I can't tell you.

Q. You say in answer to Mr. Mills' question that it was in excess of several thousand. What does that mean to you?

A. Well, I would say anything in excess of three or four thousand.

Q. How much of that money did you spend?

A. I didn't spend any. There was an agreement between the other people and myself that my part of the expenses should be paid by work and by team work. I furnished teams for all of the team work that was done in there and hauled all the supplies in there and I put in my own time and part of the time had two or three men from the ranch when we were surveying, and that all went in towards my part of the expenses.

Q. How many of you were associated together in these locations that you made in 1900 or 1899?

A. Ten or eleven of us.

Q. I understand you to say that you located fifty sections in all.

A. In the neighborhood of fifty. I believe it was a little bit more. We were not overlooking anything that we thought might be oil land.

Q. You did miss these six sections in 30-23?

A. The other fellows beat us to it, I guess.

Q. So, there were around sixty sections that were located at that time. You say there was somewhere around four to five thousand dollars spent in Township 30-23. Is that correct?—on the unsurveyed land?

A. That much or more, but I can't say as to how much more.

Q. How much was spent on the other locations outside of that township. **[125]**

A. I can't tell you what was spent on each separate township, but I know we had about thirty men in there for several weeks at one time.

Q. What were they doing?

A. They were surveying and building mounds, and there was several shafts dug.

Q. Where were these shafts dug?

A. I can't tell you the point now or the sections where they were dug. I did know at the time as we made a map that Mr. Lamont and I prepared, and he marked on that map where each one of the shafts were sunk. But I have not seen the map for three or four years.

Q. Were you at any of those shafts yourself?

A. Not after they were dug.

Q. Were you at the time they were dug?

A. While they were digging, yes sir.

Q. Did any of those shafts reveal mineral in any quantity—

A. No, not when I was there.

Q. By Mr. Mills—Had you finished your answer?

A. Not quite. I was going to add that when I

was there when Mr. Lamont and I rode over the country looking at the locations, and I wasn't on the ground afterwards in other places.

Q. By Mr. Lewers—Do you know of any of those shafts revealing mineral?

A. I do not.

Q. Never heard of it?

A. No sir.

Q. So far as you know none of them revealed mineral?

A. Not to my knowledge.

Q. They were simply shafts dug in the hills without regard to whether you found anything or not?

A. We used to consider in those days that we had to do so **[126]** much assessment work, and it was done for assessment work purposes.

Q. Did that disclose any mineral in place?

A. Not to my knowledge.

Q. You also understood that you had to do a certain amount of location work?

A. Yes sir.

Q. Was that location work done on all of these claims?

A. It was scattered all over the hills, but the shafts were not sunk on all of the claims.

Q. Then there were many claims on which no work was done?

A. Except the surveying and mounding.

Q. That is, marking out the boundaries was all that was done upon many of the sections?

A. Yes sir.

Q. And on the other sections where you did dig shafts it disclosed nothing?

A. I don't know whether it did or not.

Q. You don't know of anything that was disclosed?

A. I do not.

Q. And you say that the following year a number of people came in there and relocated many of your claims?

A. Yes sir.

Q. Did you make any effort to prevent their doing so?

A. No sir. We went in there and relocated all of it ourselves.

Q. That is, you relocated all of it?

A. Where we didn't have our assessment work done.

Q. Did you continue to do that afterwards?

A. Yes sir.

Q. For how long?

A. Six or eight years. In fact, we kept on on part of it **[127]** till the lands were withdrawn from entry.

Q. Did you in any work that you did on any of those relocations ever discover mineral in place anywhere?

A. No sir.

Q. What did your relocation work consist of from year to year?

A. It consisted of posting notices on the land and recording the same.

Q. That was not very heavy labor?

A. No sir; it was while it lasted, but that part didn't last long. We had to go out there at twelve o'clock at night and lay in the sage-brush and pretty near freeze to death till twelve o'clock, and then see if we could beat the other fellow to it.

Q. Then you did nothing but post the notices?

A. We did some work. We kept Lamont there three or four years.

Q. What was he doing?

A. We considered he was trying to hold possession of the ground.

Q. What was he doing?

A. Riding around over the country.

Q. Was he doing any work besides riding around?

A. No; nothing towards development work.

Q. Do you know of any discoveries that he made during that time?

A. No sir.

Q. Of mineral of any kind?

A. I do not.

Q. Don't you know as a matter of fact that he did not discover mineral of any kind?

A. I do not. **[128]**

Q. You never heard of his discovering any, did you?

A. Yes.

Q. What did he discover?

A. Well, he told me that he had discovered oil formations in different points on the land, and he had marked out on this map that I speak of where they were.

Q. Did he discover any oil?

A. No.

Q. Then the only mineral discoveries that he made that you heard of were some oil formations?

A. Yes sir.

Q. How many sections do you now have locations upon?

A. None.

Q. You have entirely abandoned all of them?

A. Yes sir.

Q. Have you attempted to relocate any of them at any time within the last two or three years?

A. No sir; not since the land was withdrawn from entry.

Q. Is the land now withdrawn from entry?

A. I understand so.

Q. Still is?

A. I think so.

Q. Have you ever made any inquiry to know whether the withdrawal was removed?

A. Not recently, no, because the whole country was relocated again and derricks built all over it.

Q. The lands were withdrawn from entry about February, 1900, were they not?

A. Not that ever I heard of.

Q. You had locations made on that ground after February, 1900, did you not?

A. Yes sir. [**129**]

Q. And continued to relocate on the 1st of January up to what time?

A. 1908 or '9, on a portion of the land.

Q. Up to 1909? How much land up to 1909?

A. I think we had dropped all but about three sections.

Q. And where are they?

A. One of them was section 32, 30-24. I don't remember the other two sections now. They were right around there or close to it.

Q. Any of them in 30-23?

A. There might have been one of them. I can't say positively. There might have been one section in 30-23.

Q. Which section was that?

A. I can't tell you; I don't remember now. In fact, the last locations put on there, I didn't do it. There is a friend of mine living here in Los Angeles that wanted me to let him in on it, and I gave him a map of the country and he went up there. He asked me before he went what sections I wanted him to go in on, and I said outside of 32 I would leave it to him, as he was better posted on oil than I was, and I would leave it to his judgment.

Q. Do you know what he did?

A. No sir.

Q. Did you ever inquire?

A. Yes sir.

Q. Did you ascertain when you inquired?

A. No, for the reason that the location was lost and we found out it was located by other people. We found other people had taken possession of our cabin and made their location notices out and recorded them and doing work on the ground.

Q. What where they doing?

A. Digging pits for fuller's-earth or something that they [**130**] claimed to have discovered, and I went home and forgot about it.

Q. Dismissed it from your mind?

A. Yes sir.

Q. Had more important things?

A. I wasn't looking for a fight, when they had the best of it.

Q. You say there was a regular stampede after you made your locations? What year was it?

A. It was either the 1st of January, 1901 or 1902. I am not positive which.

Q. And you say none of these people were oil men?

A. None that I knew of were oil men.

Q. Commonly known as "tenderfeet"?

A. Yes; "hayseeds" like myself.

Q. And isn't it a fact that during the oil excitement such men located pretty promiscuously, whether there were oil indications or not?

A. I presume it would be so.

Q. Do you know as a matter of fact whether they did?

A. Yes; I think there were some parts of the country located where there were no oil indications in sight.

Q. When you and your ten associates went in there and located between fifty and sixty sections there, did you seriously anticipate or expect that you

were going to go ahead and develop all of that property?

A. We didn't expect that we would do it ourselves, but we expected at that time to interest people in there to lease it.

Q. It was a speculation, wasn't it?

A. And to improve what we could improve, and the fact of the matter was we were in a very fair way of accomplishing it when the slump came in the oil business.

Q. That is, you took it up as a speculation? [131]

A. We took it up to make some money out of it if we could.

Q. Did you think of the amount it would cost you to do the location work on those sections that you took up?

A. That it would take to do the location work?

Q. Yes; just the location work.

A. I never figured it up; no. We went in and located it and let the fellows that put up the money figure.

Q. Do you know how much was put up altogether that first year?

A. I don't know of my own knowledge. It was discussed amongst our people, though, that there were about $40,000 spent.

Q. It would take twice that to do the actual location work on the ground that you had?

A. No sir.

Q. How many claims did you figure to the section?

A. Four.

Q. And you now recollect how many sections you had altogether?

A. Somewhere in the neighborhood of fifty.

Q. But it was more than fifty?

A. I think there was fifty-one or fifty-two sections, to the best of my recollection.

Q. Do you know whether this stampede of people that came in after you had located all this territory did their location work?

A. All I know of their doing was to come in and post their notices—location notices—and record them.

Q. Did you ever know of any practical oil men going in there to relocate any of those claims that you had located?

A. Not at that time, no sir.

Q. You mean that you did know of their doing so at some other time? [132]

A. Yes sir.

Q. When?

A. When they took our last three sections away from us.

Q. When was that?

A. 1908 or '9.

Q. Then prior to that time you didn't know of a practical oil man going in there and relocating any of the ground that you had there?

A. Outside of my own associates, I do not.

Q. That ground was generally understood by you to be open to relocation, was it not?

A. Yes sir; it was at that time.

Q. And that was generally understood in the community, was it not?

A. Yes sir.

Q. Now, you say the last time you hauled any freight in the Elk Hills was within the last ninety days?

A. Yes sir.

Q. What was that?

A. I hauled some rigs out of the Elk Hills to Maricopa.

Q. Out of what portion of the Elk Hills?

A. The south slope.

Q. In what section?

A. I don't know what section they were on. I was not interested in the property at all. I was just contracting to take the stuff out.

Q. For whom?

A. Charles Dickinson of Maricopa.

Q. Do you know to whom the rigs had belonged —the derricks?

A. He bought them, I think, at sheriff's sale. I don't remember now. I don't know that I ever did know whom they [**133**] belonged to.

Q. Can you fix any closer just where they came from? Can you fix the township from your knowledge of that country?

A. Well, they were very close to the corners of 30-23, 30-24 and 31-23 and 31-24. They were right near the corner of those townships.

Q. But you don't recollect which township they were in?

A. I do not, because I was not there for so long that I didn't know where the line runs there, and while I was freighting in there, I was only there twice.

Q. Were they up in the hills or where?

A. They were back in the hills, I should say, about a mile and a half.

Q. How many of those derricks did you haul out of there?

A. Eight complete rigs.

Q. You say when you made the locations, you and your associates, you thought the Elk Hills was oil territory?

A. Yes sir.

Q. Could you say at that time that you knew it contained valuable oil deposits?

A. No, I couldn't say such a thing as that, of course.

Q. That is, you thought it was a prospect that would warrant taking a chance on?

A. Yes sir.

Q. Had you any idea how deep you would have to go to find oil?

A. No sir.

Q. Had you any idea whether or not if you did go down you actually would find oil?

A. We had an idea that we would, or we would not have gone in and spent any money on it.

Q. You didn't spend any money putting up a derrick and [**134**] putting a rig in there?

A. No sir.

Q. Did you ever attempt to do so?

A. No sir.

Q. Did you ever make any arrangements to do so?

A. We were, when the slump in oil came.

Q. How long did that slump continue?

A. Six or seven years.

Q. Up to when?

A. 1907 or '8.

Q. When did the slump begin?

A. In the summer of 1901, to the best of my recollection.

Q. From the time you made your locations in '99, did you endeavor to do any actual drilling or oil development work?

A. I did not.

Q. Were you in a position where you could have interested capital, you or any of your associates?

A. Yes sir.

Q. And plenty of it?

A. Yes sir.

Q. Now, there is a considerable portion of the Elk Hills that is used for grazing during the spring months?

A. Yes sir.

Q. You have seen sheep grazing over that entire country, have you not?

A. Lots of times.

Q. And in ordinary years the winter and spring rains produce quite considerable grass, do they not?

A. Some years it produces a very fair feed crop.

Q. And that furnishes feed for sheep for how long?

A. As long as the grass stays green; from sixty to ninety days. [135]

Q. And then the sheep are moved to the summer range?

A. They take them out of there. I don't know where they take them.

Q. You are not familiar with the sheep business?

A. No sir.

Q. Did you ever see anything else except sheep?

A. On the lower hills I have seen cattle.

Q. Do you know of the elks grazing in there?

A. Yes sir.

Q. How many of them?

A. About two hundred.

Q. Are you familiar with Section 16, Township 30 South, Range 23 East?

A. No.

Q. Do you remember a portion of that township that is now under cultivation in small ranches?

A. No; I do not.

Q. When were you last in there?

A. I haven't been on the north slope since 1906.

Q. Was there any oil shown at the place where you removed these derricks within the last ninety days?

A. Yes.

Q. What was it?

A. Well, there was oil scattered around there. I don't know how it got there. There was one of the rigs where they had drilled a hole down several hundred feet deep, that there was a good deal of oil all around there, and a big tank of oil standing there.

Q. Do you know whether it was hauled out of the well or hauled there?

A. I don't know how it got there. I emptied it on the ground to get the tank out. [136]

Q. How about the other rigs?

A. There was one, though, that had a small amount of oil in the tank.

Q. Could you determine where the engine had been located?

A. Yes sir. I took it down.

Q. Was that near where you found the oil?

A. Yes sir.

Q. And every indication was that the oil was hauled in from somewhere else?

A. Presumably so, yes.

Q. No doubt about it?

A. I would hate to say that it came out of the ground. I didn't make any investigation of where it came from.

Q. You found oil on the bearings of the engine, too, didn't you?

A. Yes sir.

Mr. Lewers—That is all.

REDIRECT EXAMINATION OF J. I. WAGY.

By Mr. Mills:

Q. The order of withdrawal that you refer to was in 1909—when the land was withdrawn?

A. Yes sir.

Q. That is, the Secretary of the Interior's order of September, 1909?

A. Yes sir.

Q. What is this land worth for pasture,—the land on 30-23?

Mr. Lewers—Objected to on the ground that no foundation is laid to show that the witness has knowledge of the rental **[137]** value of the land for pasturage in that vicinity. On the contrary, it appears from the witness's testimony that he does not have such knowledge.

Q. By Mr. Mills—What value has it for pasturage?

A. You mean the rental value?

Q. Yes.

A. I should say about ten cents an acre. That is as much as I would pay for it.

Q. Per year?

A. Yes sir.

Q. You say you have seen elk in there?

A. Yes sir.

Q. During most of the season don't they graze in the flats?

A. They graze in Miller & Lux's alfalfa field.

Q. They wouldn't get very much sustenance in those hills?

A. Not in the summer, no sir.

Q. Did you know anything about the railroad company known as the Southern Pacific Railroad Company selling as agricultural lands certain portions of the south half of Township 30, Range 23 East —the odd numbered sections—in 1904?

A. No sir.

Q. You had locations on that land yourself at that time?

A. Yes sir.

Q. State whether or not in any part of the year 1904 those locations which you made were on the records in Bakersfield, Kern County.

A. They were.

Q. Were the mounds on the ground? The monuments that you built there locating your claims there during the year 1904?

A. Yes sir. [138]

RECROSS-EXAMINATION
OF
J. I. WAGY.

By Mr. Lewers:

Q. Had you made a discovery of mineral on any one of them?

A. No sir; not to my knowledge.

Q. Mr. Wagy, what part of the Elk Hills do you now consider to be mineral, if any?

A. I don't know. That is a pretty hard question to answer, because I have not been in the Elk Hills only twice since 1906.

Q. Do you consider the western portion of the Elk Hills to be mineral or oil bearing?

A. I have not been in the western portion of the Elk Hills since 1906.

Q. The question is, do you now consider it to be mineral lands or oil bearing lands?

A. I do, because I have seen nothing to change

my opinion from my former opinion when I was interested there.

Q. That is, you consider both east and west portion of the Elk Hills to be mineral and oil bearing lands?

A. I can't say that about the east, especially the southeast, because I hauled a lot of material out of that country, which was abandoned, which would naturally make me think there was no oil there.

Q. In the southeasterly part?

A. Yes sir.

Q. How about the western part?

A. I haven't been there myself, but I have heard they struck oil there. I would naturally consider it was good oil territory.

Q. Are you acquainted with a man named Myers —Alfred [**139**] Myers?

A. No sir.

Q. Did you not meet a man named Alfred Myers in the first week of this month and have a discussion with him as to the character of the Elk Hills?

A. What was he? An inspector? There have been so confounded many around there of those people on forest reserve business—

Q. No; he was a field agent of the Southern Pacific.

Mr. McCormick—Railroad or Company?

Mr. Lewers—Railroad Company.

A. There was a gentleman saw me in there one day, but I can't say what his name was.

Q. You had a conversation with him?

A. I did.

Q. Did you not in that conversation state to him in substance that you didn't regard the western portion of the Elk Hills and western portion of Township 30 South, 23 East, as mineral or oil bearing territory?

A. No; I never made any such statement as that.

Q. Did you state to him anything in substance to the effect that any portion of the Elk Hills did not contain oil?

A. Yes sir.

Q. What portion?

A. The portion where I hauled the material out of.

Q. Did you not also tell him that the western portion, and the western portion of this Township 30-23, in your opinion, was non-mineral?

A. No; I didn't make any statement like that because, as I say, I have not been in that country myself since 1906, and at that time we were in there chasing elk and not looking for oil lands. [**140**]

REDIRECT EXAMINATION
OF
J. I. WAGY.

By Mr. McCormick:

Q. When was it that you met this party?

A. It was some three or four weeks ago.

Q. Did he give you his name?

A. Yes sir: he introduced himself.

Q. Do you remember whether it was Myers?

A. Yes sir; I believe it was Mr. Myers.

Q. Did he tell you what his business was or why he wanted to talk to you?

A. Yes sir.

Q. What did he say about that?

A. He said he was there looking for information for the S. P. Company in regard to the Elk Hills, and he asked me a few questions about it and he asked me if I was the Wagy on the early locations in there, and I told him I was, and he asked a question at that time, "Did you consider that oil territory?" And I told him "Most assuredly I did, or I would not have spent my time and money there."

Q. Was there anyone with him?

A. There was a number of people in the office at that time.

Q. Which office was that?

A. In my office.

Q. Your own office?

A. Yes sir.

Q. Is that where you had the talk with him?

A. Yes sir.

Q. How long did the conversation last?

A. Only a few minutes. [**141**]

Q. Did you see him more than once?

A. No sir.

Q. Did he mention the fact that it was in connection with this present suit that he was up there or seeking to acquire information?

A. I don't remember whether he mentioned that directly or not, but I inferred that it was.

Q. Did he talk to anybody else there, to your knowledge, about the same matter?

A. Not to my knowledge. He asked me about some parties that had been in there, and I told him where to find one man—a man named Kenzie.

Q. What were his initials?

A. David.

Q. What is his address?

A. Maricopa.

Q. Have you told us now about all this Myers said to you and you said to him at the time?

A. I think so, because we didn't talk very long, and when I made the statement that I did about what I thought about the country when I made the locations, he kind of laughed and he said "I don't think you will do me much good", or something like that, and we laughed it off and he bid me good day and left.

RECROSS-EXAMINATION
OF
J. I. WAGY.

By Mr. Lewers:

Q. He didn't make any effort to conceal his purpose in seeing you?

A. No sir.

Q. Or his identity? [142]

A. No sir. He told me who he was and that he was there—I couldn't say positively whether he said it was for this case, but anyway, I inferred that it was regarding this case, from the conversation.

Q. There was more conversation between you than what you have given here?

A. Perhaps in a general way.

Q. Didn't he ask you more questions than what you have here stated?

A. I think not.

Q. Didn't he ask you specifically about different portions of the townships?

A. Well, he asked me about where the seepage was that I discovered, and I told him that it was on —I think he had a map himself. I don't remember what portion of the section, but I remember the section, and he had a little map with that marked on it, and asked me if it was about that location, and he asked a question if I had found any seeps of that kind in 30-23.

Q. What did you tell him?

A. I told him that I had not.

Q. Do you recollect anything being said about hauling out stuff there?

A. Yes sir; there was something said about that, because we were laughing about the southeast. I told him most assuredly I didn't think there was anything where that material came out of, because there was five hundred tons of stuff that I hauled out of there, and that they would not have abandoned it if they didn't have a pretty good idea that it was barren territory.

Q. In that connection, did he not ask you about the western portion of the township?

A. I think he asked about it, but I think I told

him the same as I did you,—that I hadn't been in the western portion. [143]

Q. Didn't you tell him that it was non-mineral?

A. No sir.

Q. Did you tell him it was mineral?

A. No; I think he asked the question—he asked me something about whether I had hauled anything out of the western portion, and I told him I hadn't been there or in the Elk Hills at all only where I hauled those rigs from, for years.

Whereupon the further taking of testimony herein was adjourned until Saturday, April 20, 1912, at 10 o'clock A. M., at the same place.

W. E. OTT, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I live in Los Angeles and have been engaged in the oil business about seventeen years. Most all of my experience has been in California, but I had some little experience in Texas. I have been in Indian Territory in Kansas looking over some of the oil fields there, but I never was engaged in the business. In California I worked in Los Angeles first, Summerland, Bakersfield, McKittrick, Santa Maria and Coalinga and in the Midway fields. I first came to McKittrick in April, 1901. The first time I went out there was on a pleasure jaunt or trip with Mr. J. B. Treadwell. On the second occasion I went out there at Mr. Treadwell's request and assumed charge of the S. P. Company's property at McKittrick, as

superintendent. My duties as superintendent did not call for actual drilling, but my duties were to oversee the work in general. The drilling I did—development work was under contract. It was a verbal one. I knew that the contract was with the Southern Pacific Railroad or the Southern Pacific because Mr. Treadwell told me so. Our south end lease I think was [**144**] on 29 or 20; I think probably it went around the line. Another lease we had on 40 acres was about midway at the north end. I don't remember what section it was on. I had done previous work under contracts for the same company. I was always informed that it was the Southern Pacific Railroad Company. My previous contracts were in the Kern River Fields on Section 3 and in Summerland in Santa Barbara county. My work brought me in contact with a man by the name of E. T. Dumble. He was introduced to me by Mr. Treadwell. Treadwell told me that Mr. Dumble was connected with the S. P. Company as their coal expert. During his first trip, Mr. Treadwell took Mr. Dumble around the field and on the second trip he did the same thing and Mr. Treadwell finally informed me that Mr. Dumble was to succeed him and advised me to resign, which I did. At that time Mr. Treadwell was with the Southern Pacific Railroad Company as their oil expert and superintendent of their oil fields. Mr. Dumble succeeded him, I think, in 1903. When I first went there we paid our men by checks on the Bank of Bakersfield. The checks were ordered on Mr. J. B. Treadwell. On an average we were producing less than two cars

a day from the south end lease and none from the north end. This oil was delivered to the Southern Pacific Railroad Company. I presume, by my bookkeeper, as he handled that end of the business. I turned it over to him. His name was C. A. Hiveley, who, I believe, is now the General Manager of the Kern Trading & Oil Company, a subsidiary of the Southern Pacific. I think the lease at the north end belonged to the railroad company. The other two leases that I was operating on were leased. Mr. Treadwell, in his activities as an oil expert of the Southern Pacific Railroad Company, was about there looking up lands for their mineral value. I found some indications at one time there and he gave me a gentle jacking up because I hadn't told him about it. These were some lands that he regarded [145] as mineral and they consisted of a 40 acre piece on one corner of the company's property, that is, property which they claimed to own or leased. Mr. Treadwell and C. A. Boynton, I believe, located some land in the Midway district. In my opinion, Mr. Treadwell was a competent oil expert and was a man of wide and varied experience and a man of very good judgment on land values. The only evidence that I have that the Southern Pacific Railroad Company, as Mr. Treadwell's principal, had confidence in his judgment as to the value of mineral lands in that locality, is the fact of his retaining his position and their having sent him to the Beaumont Fields in Texas and the Louisiana Fields, in their interest. There were certain lands in that district with J. B. Treadwell's

name on them and I asked Mr. Treadwell how that occurred and he said it was through Collis P. Huntington that his name was used on that land. Just why it was used he did not see proper to continue the conversation and he did not tell me any further and I did not ask him. I understood from the conversation that the lands were not his own, but belonged to the Railroad Company. The reason I thought that was that his name being on so many pieces of land around there, it looked peculiar to me, for I thought I knew Mr. Treadwell didn't own the property, and it naturally aroused more or less curiosity, and I asked Mr. Treadwell the question how it happened that his name was on that land. He said, at the instance or suggestion of Mr. Huntington—Collis —for the S. P. I knew Prof. Owen. He was a geologist in the employ of the Southern Pacific Railroad Company. I saw him prior to 1904 in McKittrick, and also in Kern City. The first time I met him was at the train in McKittrick. I was going away. Someone introduced us and he handed me a letter from Julius Kruttschnitt, Fourth Vice-President and General Manager of the Southern Pacific Railroad Company. The letter recommended Mr. Owen to me and asked me to extend to him all the courtesies of my [146] office, as the company's geologist. It was signed by Julius Kruttschnitt. This was in the latter part of 1902. I subsequently met Mr. Owen during the time I was in the employ of the Southern Pacific Railroad Company. He was a very quiet man and not given to making many remarks or giving out his business,

but it was evident on the face of it that he was looking for signs of oil bearing lands. He was riding out through the country and would be gone hours at a stretch. Where he went, I do not know. He never asked me to accompany him. The wagon and horses that he used belonged to the Southern Pacific and the man who drove him out was in the employ of that company. After the severance of my relations with the company, Mr. Dumble was there on a few occasions and he would go out in the company's rig with Prof. Owen. During my incumbency of the office I saw Mr. Owen go out in the country several times and afterwards, when I was a contractor, I saw him every little while. Before Prof. Owen's time, some of the officials of the Southern Pacific Railroad Company visited the fields. They were E. H. Harriman, Julius Kruttschnitt and D. Burkhalter, the division superintendent of the San Joaquin Division. I drove Mr. Harriman, Mr. Kruttschnitt and some other parties who were with them, around the Company's property. From Mr. Harriman's conversation with me, I learned it was a tour of inspection. In fact, I knew it was a tour of inspection, because I had been notified by J. B. Treadwell, who was my immediate superior, that Mr. Harriman and Mr. Kruttschnitt were coming and for me to extend them all courtesies. Mr. Kruttschnitt telegraphed me to meet them at Bakersfield with a special train. Mr. Treadwell told me in a letter that they would be there on a tour of inspection of the oil fields. I had a conversation with Mr. Harriman. He spoke of

the properties in a general way. He was anxious to see the wells and seemed to be fairly pleased with our little production. He made some remarks [147] however, that he thought it would be a good idea if we would drill our wells deeper, speaking of a certain well in another district that had been deepened and had made a better production. He was inquisitive as to the depth of the Reward well and wanted to know where the sands were and I told him. In driving around we passed the asphalt mine, which was a very rich one, and which at that time was under the control of R. H. Howk, and Mr. Harriman seemed to think pretty well of that rich asphaltum and asked me the question why it was we didn't own that property. By "We" he referred to the Southern Pacific Railroad Company. I have been in the Elk Hills territory four or five times. I always thought there was oil there. It was the general belief among oil men along McKittrick that the Elk Hills were oil territory. I heard it talked about all the time I was there; as early as 1901 and 1902. In fact there were rigs over in portions of that field at that time which had more or less oil. How much they had, I don't know, while I was superintendent there. Mr. Owen, in speaking to me of the territory in general from McKittrick up to Sunset, which is known now as the Midway District, said that it would be a great field.

CROSS-EXAMINATION
OF
W. E. OTT.

By Mr. Lewers:

Q. During how long a time were you acquainted with Mr. Owen?

A. Well, I was acquainted with Mr. Owen from the time he first came to McKittrick—when I first met him.

Q. The question is, during how long a time in months or years.

A. Well, I expect I knew the Professor for the biggest end [148] of the year, anyway.

Q. And how often was he there during that time?

A. He was simply there several times. I can't say how long.

Q. At any one time how long was he there?

A. He would generally come in and stay around McKittrick a few hours and then disappear.

Q. Disappear where?

A. That I couldn't say. He would generally drive out somewhere.

Q. Driving around the country?

A. A great deal.

Q. How long a period would he remain with McKittrick as his headquarters while he was making these trips around the country? Was he there a week, a month, or a couple of days?

A. I don't think he ever made any protracted stays there, to the best of my recollection I would see him—he would come in today and go out through the fields somewhere, and I might see him the next day and I might not, and I might see him the following day. Whether he came back to McKittrick that night or not I can't say. He may have come back the same night that he went out. He may have come back every

night, but I doubt it very much. I believe he did some camping out.

Q. Do you know in what direction he went when he drove out on any of these trips?

A. Well, sir, he went to the four cardinal points of the compass.

Q. That is, he went everywhere?

A. Yes sir.

Q. So far as your observation went he examined the country quite generally, did he not?

A. Yes sir; he was examining it off and on all the time he was there. **[149]**

Q. The lease that you were employed upon is near McKittrick, is it not?

A. One of them.

Q. Which one?

A. The South-end lease. The old lease.

Q. And the North-end lease is about three miles from that?

A. Some three or four miles; yes.

Q. And neither of those leases are in the Elk Hills, are they?

A. No; I don't think the Elk Hills are designated on that side of the valley at all.

Q. There is a valley between the Elk Hills and the two leases?

A. Yes sir; there is a little valley. There is a short range of hills connecting just beyond our lease, toward Sunset, that I think they connect up pretty close with the Elk Hills.

Q. Do you know whether they do or not?

A. I can't swear to it.

Q. You are not very familiar with that country in there?

A. Not in particular. My duties did not permit my chasing around very much.

Q. You simply drove through occasionally when you were going about some other business?

A. Yes sir.

Q. You didn't go and make an examination of the Elk Hills, did you?

A. No sir.

Q. And you never did make an examination of the Elk Hills?

A. No.

Q. Simply drove through?

A. Drove through.

Q. And your mind was attracted and directed to the business [150] that you had on hand more than to prospecting for oil?

A. Possibly it was and possibly it was not.

Q. Which was it?

A. I might have been thinking of business or something else. I didn't always drive around on business.

Q. You may have been doing one or the other, but I want to know which you were doing?

A. As a rule, when I drove through the Elk Hills I was going hunting.

Q. Hunting what?

A. Whatever I could find.

Q. What were you hunting to find?

A. Sometimes ducks, sometimes rabbits, coyotes and various kinds of game.

Q. You didn't expect to find ducks up in the Elk Hills?

A. I don't think I ever saw any ducks in the Elk Hills.

Q. When you were hunting ducks you were going over to the lake?

A. Yes sir; either to the lake or close by the lake.

Q. And when you were hunting quail where did you go?

A. Around the hills.

Q. Which hills?

A. Various hills. Principally towards Temblor in hunting quail.

Q. That is to the west or southwest from McKittrick?

A. Let's see. If I recollect rightly Temblor is north and a little west. I can't be positive of that, but I think it is.

Q. Where did you go when you were hunting for rabbits?

A. Sometimes on what we call the McKittrick Hills. Sometimes on further down by the railroad track, and various places.

Q. Did you ever go up into the Elk Hills hunting for rabbits? **[151]**

A. I never went there especially for rabbits. I have driven in there and shot them or shot at them from my buggy.

Q. You say you have driven through the Elk Hills. What portion of the Elk Hills was it that you shot rabbits from your buggy?

A. Generally down along the railroad track.

Q. Toward Buttonwillow?

A. Yes sir.

Q. There is a road leading down in that direction?

A. Yes sir.

Q. That would be the west end of the Elk Hills, would it not—near the railroad?

A. The west end? I am not sure about that.

Q. It was not the east end, was it?

A. I am not sure.

Q. Do you know where the east end of the Elk Hills is?

A. I am not sure that I do.

Q. Have you ever been there?

A. I don't know.

Q. Have you ever been in the west end of the Elk Hills?

A. I can't tell you that, either.

Q. You don't know whether you have either been in the west or east end of the Elk Hills?

A. I have been in the Elk Hills. Whether you term it east end or not or west end or north end or south end, I can't say.

Q. You don't know where you have been in the Elk Hills?

A. Not as to directions.

Q. Have you ever been on the north slope of the Elk Hills?

A. The north slope would be towards—yes, I have —it would be the northwest slope.

Q. Near the railroad?

A. Yes sir. [152]

Q. Now, can you recollect any other portion of the Elk Hills you were ever in?

A. Yes sir; I have been through the Elk Hills following the railroad track, and I went into the Elk Hills proper, a mile and a half beyond McKittrick, going north.

Q. A mile and a half beyond McKittrick? In which direction from McKittrick?

A. Going north.

Q. North from McKittrick?

A. Yes sir.

Q. And you considered that as a portion of the Elk Hills?

A. Yes sir.

O. I understand you to say that you have been in the Elk Hills near the railroad track and also north from McKittrick?

A. Yes sir.

Q. Anywhere else?

A. North and a little east. In this portion that I speak of, north and a little east, I was hunting.

Q. The question is were you in any other portion of the Elk Hills?

A. I have been since that.

Q. Since when?

A. Since I left the employ of the Southern Pacific Railroad Company.

Q. When was that?

A. 1903.

Q. Well, how long since? Immediately or several years?

A. Well, I was in there about a year ago.

Q. And when before that?

A. I was there before that, yes.

Q. How long before?

A. A few months before that. It might have been five or [153] six or seven months.

Q. That constitutes the number of times and places you have been in the Elk Hills generally, does it?

A. Yes; I may have been in the Elk Hills to some extent, but I can't call it to mind.

Q. You won't pretend to say that you are familiar with the Elk Hills?

A. Not particularly, no.

Q. Have you been in Township 30 South, Range 23 East?

A. I can't tell you.

Q. You say that Mr. Dumble was down there how often while you were employed?

A. I think Mr. Dumble was there probably four times when I was there.

Q. Did he make any examination of the country as Mr. Owen did?

A. He and the Professor were out together.

Q. Was he ever out by himself when Mr. Owen was not present that you know of?

A. I don't think that he ever was. If he was, it was not to my knowledge.

Q. And you say your recollection is that Mr. Owen made a very extensive examination of the territory in all directions from McKittrick?

A. Yes sir.

Q. Down on the Buena Vista Hills?

A. He went everywhere. Where he went, I don't know. I can give no definite points.

Q. And you say that he referred to certain territory as being oil territory?

A. Yes sir.

Q. That was where? **[154]**

A. The general district lying between McKittrick and Sunset.

Q. That is, to the southeast from McKittrick?

A. Yes sir.

Q. Down along that range of hills?

A. I inferred from his remarks that covered the flats and hills in through there.

Q. Between McKittrick and Sunset?

A. Yes sir.

Q. And you never heard him say that the Elk Hills were good oil territory?

A. Only in a general way, of that whole country.

Q. Did you not testify on the direct examination that you never heard Mr. Owen or Mr. Dumble either say that the Elk Hills were good oil territory?

A. I did.

Q. And that is the fact?

A. Yes sir. And in modification I say only in a general way of the country from the McKittrick district to the Sunset district—if that includes any of the Elk Hills, then he did; if it does not, he didn't. That is all.

Q. Does the country in a general way from Mc-

Kittrick to Sunset district include any portion of the Elk Hills?

A. I am not sure but what it does. I am not positive of that.

Q. Is it not a fact that the Elk Hills lie a considerable number of miles north of that range of hills from McKittrick to Sunset?

A. I can't tell you.

Q. You are not familiar with the country enough to tell?

A. No sir.

Q. How long were you in McKittrick? **[155]**

A. From 1901 to 1903.

Q. And you don't know whether the Elk Hills lie to the north of the range of Hills leading from McKittrick to Sunset?

A. No sir.

Q. Do you know where the Elk Hills are?

A. In a general way. I have been telling what were called the Elk Hills in a general way. That is all hearsay testimony with me as to where they are and what they are.

Q. You say there was a general belief amongst oil men that the Elk Hills were oil territory. Is that correct?

A. Yes sir.

Q. And when did that belief exsist?

A. All the time I was out in that country and up to the present time.

Q. Will you kindly mention any oil man that told you that the Elk Hills were oil territory?

A. Oh, I have heard a number of them. I think Mr. Wible made a remark of that kind.

Q. When?

A. Some little time ago. I didn't know Mr. Wible till I was in McKittrick quite a little while.

Q. How many years ago did he make that remark?

A. Possibly in the latter part of 1901 or as early as 1902.

Q. Where was that remark made?

A. It may have been in Bakersfield. I think probably it was.

Q. What was the remark he made?

A. Just in a general way, speaking of the Elk Hills, like oil men will gather around and talk.

Q. What did he say?

A. I told you what he said. **[156]**

Q. Not yet. Will you kindly give me as near as you can what he said?

A. He was speaking of the Elk Hills in a general way and he made a remark that it was good territory. I can't say that those were the exact words, but that was about the way it was.

Q. Did he tell you any oil had been discovered there?

A. I don't know whether he did or not.

Q. Did he at any time prior to January 1st, 1905, tell you that any oil had been found in the Elk Hills?

A. Yes—pardon me. Will you repeat the question? (The reporter reads the question.) I don't think he did.

Q. Did he tell you at any time prior to January 1st, 1905, that he knew of oil in the Elk Hills?

A. I don't think he did.

Q. Did any other oil man tell you so prior to January 1st, 1905?

A. That is making a pretty hard question for me to answer, because I have heard it talked so generally that I can't call to mind who the dickens it was, because, as I say, it was generally conceded.

Q. I know you said that.

A. And Mr. Treadwell thought it was good territory. Let me ask a question. There is a range of hills immediately across the valley from McKittrick to the north and east. I believe that is a continuation of the Elk Hills.

Q. On which side of the railroad?

A. On the north side of the railroad. The north side where it goes into the hills, and it would be on the east side of Olig Station.

Q. What about it?

A. Mr. Treadwell and I went through those hills and he found some oil sands over there. [157]

Q. When was that?

A. I found those oil sands there in 1902.

Q. Whereabouts?

A. Probably a mile or a mile and a half north of McKittrick, and probably a mile east. Somewhere along there. It is not very far from what is known as the Sea Breeze Oil Company.

Q. And you considered that in the Elk Hills?

A. In that portion of them I did. If that is a portion of them, I did; if it is not, I didn't.

Q. What did he say?

A. He thought it was a good proposition.

Q. Did he say he knew there was oil there?

A. He thought so.

Q. Did he say he knew there was?

A. That is something nobody in God Almighty's world can tell.

Q. Can you tell me any other oil man prior to January 1st, 1905, who told you that he thought that was good oil territory?

A. J. B. Treadwell, and lots of men around there who were oil men, but men of no prominence. Several of my men made such remarks, and several others who were drillers and tooldressers who had more or less connection with the oil business.

Q. But, Mr. Ott, you have made the statement that it was generally conceded by oil men to be good oil territory?

A. Yes sir.

Q. I want you to give me the names of any individual you can think of who ever made any remark to that effect prior to January 1st, 1905. I don't want generalities, but I want specific names.

A. That is a question that I had not thought of. If I [158] had thought of it I would have sat down and studied it over, because several have made remarks, and it was generally known. H. P. Bender who is now deceased, and who was at that time secretary and treasurer of several oil companies, talked a good deal about those hills.

Q. Was he an experienced oil man?

A. No, but he was in the oil business.

Q. Did he know anything about oil?

A. He knew oil when he saw it.

Q. I know that myself.

A. Then you are an oil man.

Q. I want to know if you can give me the name of any man who was a practical oil man, familiar with the way in which oil occurs and is developed, and not merely connected with some oil company —an experienced oil prospector?

A. I heard Charlie Youle.

Q. When and Where?

A. Around McKittrick, when I first went there. I don't know Mr. Youle hardly to speak to him, but I heard him make the remark. He had been doing some work over there, I believe—both he and Mr. Briscoe.

Q. What did he say?

A. That it was good oil territory.

Q. Did he say he knew there was oil in there?

A. I don't know whether they did at that time or not, but I know there was oil there.

Q. You know there is there?

A. Yes sir.

Q. Did you know in 1901 there was oil there?

A. Shortly after that I did.

Q. When?

A. Along in 1902, I believe. **[159]**

Q. Where did you know it was?

A. It was taken from the ground.

Q. Where?

A. Through the Sea Breeze well.

Q. In the Elk Hills?

A. If that is the Elk Hills, yes sir.

Q. What direction and distance from McKittrick?

A. Probably a mile and a half north and a little east. I think that is the course.

Q. You don't know the township?

A. No. I want a map. I want to give those directions to this gentleman as correct as I can. I think the other day he got some that are not correct.

Q. That is, he got some that didn't jibe with the map?

A. Because of the confusion more or less of the witness on the stand.

Q. Did you make any map that you are now calling for?

A. No sir.

Q. Have you seen any that you are calling for?

A. No.

Q. Did you see any map?

A. There was a map hung on the wall. Whether that is the map I can't say.

Q. When did they show it to you?

A. It was last Monday. The map looks something like this, but whether it was I don't know.

Q. Just remain seated, Mr. Ott.

A. All right. The course and distance I am going to give according to the map.

Q. Have you any recollection where McKittrick is without reference to the map?

A. It is in California. [160]

Q. Is that the nearest you can place it?

A. No; I can go over there and walk there in the dark from here.

Q. And could you, being in McKittrick,—you are able while there to go to different properties and know what direction they are from the town, are you not?

A. Yes sir.

Q. And know in a general way as any man living in the community does, approximately how far they are?

A. Approximately.

Q. You are familiar with the country so that you say you could go about there in the dark and not get lost?

A. Yes sir.

Q. Then, so far as approximately stating direction and distance from the town of McKittrick of the various properties that you have visited, you can do so without reference to a map?

A. If I am there, yes.

Q. And not being there, you can form a picture in your own mind generally of what direction different places are from McKittrick that are near there?

A. Not correctly.

Q. Are you familiar with the points of the compass?

A. I can't always tell where it is.

Q. You know where north is?

A. Sometimes, and sometimes I don't.

Q. When you are in your normal state you know where north is?

A. I am always normal.

Q. When you are in a normal state you always know where north is?

A. Not directly.

Q. When you were in McKittrick did you have any doubt **[161]** where north was?

A. Not particularly.

Q. And likewise you were not in any difficulty as to what was east, west or south, were you?

A. During the heat of the day I am peculiarly affected. I can't tell the points of the compass, if I have not something to go by. I am not like some old frontiersmen who have been out on the plains all their lives and immediately at 12 o'clock can tell you where due north is or south. I can't do those things.

Q. When it struck noon at McKittrick if you wanted to know which was north you would have to look at the compass?

A. Unless I was outside and could see some object that I was familiar with.

Q. So that without stopping to figure you could tell instantly while in McKittrick which was north?

A. Oh, in a general way.

Q. And the same with the other points of the compass?

A. Certainly; if I could find north I could find south.

Q. Where was it from McKittrick as to the direction and distance that Mr. Youle told you about there being oil indications or discoveries?

A. I will show it to you on the map.

Q. I wish you would answer me without reference to the map.

A. No sir.

Q. Can't you do it?

A. No sir.

Q. Is it necessary for you to refer to the map?

A. It is necessary, yes sir.

Q. Why?

A. Because I can't answer you positively and correctly to my satisfaction. **[162]**

Q. Now, I am asking you to give me generally the direction from McKittrick that the place was that Mr. Youle referred to. I don't care if you vary a few points of the compass.

A. Well, sir, if I mistake not, I have certain rights there that I am going to ask for. If I have the right to refuse to answer that question without a map, I will do it; if I have not—

Q. I don't think you have. Do you claim any privileges?

A. I do.

Q. Would it tend to incriminate you?

A. No sir; I claim the privilege to look at the map.

Q. Would the answer to the question expose you to humiliation and disgrace?

A. I can't see why it should. I would be giving my answer to the best of my knowledge and belief.

Q. And is the direction from McKittrick where Mr. Youle informed you there was oil any informa-

tion that came to you in the way of a privileged communication, a communication to you as confessor or attorney?

A. I am not guilty of any of those charges.

Q. Then you will kindly answer my question.

Mr. Mills—I want to submit that the witness has answered to the best of his information and belief.

A. I want to go to this point, if you please. While I am in McKittrick, I can point out to you any point there is there by taking certain locations. To be away from there, I might give you a wrong direction. And I was here the other day and saw a witness tangled up till he couldn't see straight on that very same point, and I am asking for my rights to straighten that out on this map before I give any positive evidence.

Q. By Mr. Lewers—That is all very well, but I am anxious to have you testify and not the map. So, will you kindly **[163]** tell me in a general way the direction from the town of McKittrick this oil was discovered by Mr. Youle?

A. In a general way it was northerly.

Q. Was it east of north or west of north?

A. It might have been a little one way or the other, and it might have been due north.

Q. How far was it from McKittrick, approxiately?

A. I expect a couple of miles; a mile and a half or two miles.

Q. And when was that? You don't have to consult a calendar for that?

A. Well, I might. Have you a callendar handy?

Q. We have none for 1902 or 1901 that I am aware of, so you will have to depend on your recollection.

A. That was in 1902 sometime.

Q. What did he tell you?

A. I think that was early in 1902 or the latter part of 1901.

Q. What did he tell you?

A. He simply made the general remark that there was oil there at that point.

Q. Did he tell you on that occasion or any other occasion prior to January 1st, 1905, that he knew of oil anywhere else in the Elk Hills? Not that he believed there might be, but that he knew of it?

A. I don't know that he did.

Q. You have no recollection of his telling you anything of the kind?

A. No sir.

Q. Now, Mr. Ott, you have given me the names of three persons. Can you give me the name of any other competent oil man? **[164]**

A. A Mr. Briscoe thought there was oil there.

Q. When?

A. Along in the latter part of 1901, I think, or early part of 1902.

Q. Where did he say it was?

A. The same place.

Q. The same place Mr. Youle referred to?

A. Yes sir.

Q. Did he say there was oil anywhere else in the Elk Hills that he knew existed?

A. I don't know that he did.

Q. You have no recollection that he did so?

A. No sir.

Q. Can you give me the name of any competent oil man who told you prior to January 1st, 1905, that he knew of oil existing in other portions of the Elk Hills lying to the east of the point you have indicated Mr. Youle pointed out?

A. You mean actual oil or indications?

Q. Oil.

A. I can't recall any conversation regarding it up to that time.

Q. Then when you answered that it was the general belief of the oil men that that was oil territory you were referring to the territory near the point where Mr. Youle had pointed out or told you those oil indications were, were you not?

A. Not particularly there.

Q. What were you referring to?

A. That whole range of hills clear down to Sunset.

Q. From McKittrick to Sunset?

A. Yes sir.

Q. Were you referring to the range of hills to the north known as the Elk Hills?**[165]**

A. Well, they would be on the east side from our lease at South-end, and they ranged on down toward the Sunset.

Q. That is not the question. I understand you to say that oil men during that time regarded the territory from McKittrick down towards Sunset as being oil territory generally. Is that correct?

A. Yes sir.

Q. Did they tell you, any of them,—referring to oil men, now—that the Elk Hills lying to the north and across the Valley from the range of hills leading from McKittrick to Sunset was oil territory?

A. Lying to the north and across the valley? From where?

Q. From McKittrick?

A. I can't recall any hills lying to the north of McKittrick. The points of the compass as I have them in my mind, it would be northeast of those hills.

Q. That is, northeast from the McKittrick hills?

A. From McKittrick over to these hills.

Q. You are probably right.

A. Possibly right.

Q. I have only been there once. My knowledge of the compass perhaps is mixed. Did they tell you then that this range of hills a little to the east of north of McKittrick, known as the Elk Hills, was oil territory?

A. Yes sir; I think I said awhile ago to you that they found this oil in the Sea Breeze.

Q. But outside of that particular place at Sea Breeze did they tell you that any portion of the Elk Hills was oil territory?

A. I will have to ask you a question before I answer that. Was the Belgian Oil Company considered in the Elk Hills?

Q. I can't answer. I wish you would answer my question. **[166]**

A. If they were, yes. There was some oil there. The Belgian was in 1901. I happen to know that.

Q. Were you at their property?

A. Yes sir.

Q. How far from McKittrick is it?

A. Very close by.

Q. How far?

A. Two miles and a half or three miles.

Q. In what direction?

A. I think something like southeast.

Q. Southeast from McKittrick?

A. Yes sir; the Belgian Oil Company put in a pipe-line from there.

Q. Would property two and a half or three or four miles southeast from McKittrick be in the range of hills lying across the valley to the northeast from McKittrick?

A. I think so. I think it would be a continuation of the same range of hills.

Q. Now, Mr. Ott, you say that you were employed from the time when you first went in there as superintendent. Was it of the S. P. lease?

A. The S. P. Railroad Company's property I was told.

Q. What were you known as?

A. Superintendent.

Q. And as such you had charge of the operations conducted on the lease, did you?

A. Yes sir.

Q. And that lease was situated close to McKittrick?

A. Yes sir.

Q. And not in the Elk Hills?

A. That is what we call the McKittrick Hills according to my understanding. **[167]**

Q. Quite a number of miles from the Elk Hills, was it not?

A. Well, no.

Q. How far?

A. I don't think it was over a couple of miles, right across the valley. In fact, I think along around towards the asphalt mines there they connect up with the range of hills there. Where they separated I can't tell you.

Q. Do you know in what section and township this S. P. lease was?

A. It was in—(referring to memorandum)—it was in Township 30-22, Section 20; and I think 29. I can't be sure about that.

Q. You say that lease was leased from the Buena Vista Oil Company. Is that correct?

A. That was always my understanding of it, yes sir.

Q. Who owned the ground?

A. The Buena Vista Oil Company, as far as I know.

Q. Do you know who was president of the Buena Vista Oil Company or in charge at that time?

A. I met the gentleman, but what his name is, I don't know. He was connected, I understand, with a clearing-house in San Francisco. He came there occasionally. I can't recall his name.

Q. And that was known as the S. P. lease or the S. P. Company's lease?

A. It was generally known as the S. P. Railroad Company.

Q. That is, it was referred to in your correspondence as the S. P. Railroad Company's lease, was it?

A. Yes sir.

Q. And you say that Mr. Harriman came there on one occasion?

A. Yes sir.

Q. And Mr. Harriman held what position? **[168]**

A. I don't know. It is almost too big for me to name. I think he was president of all the S. P. lines and their connections.

Q. Do you know?

A. Mr. Harriman never told me so individually.

Q. Do you know?

A. As well as I could by reading papers and hearing general conversation as to employees of the railroad company and officers of the company.

Q. Then you had no information except what you picked up by newspapers and general gossip?

A. You can term it that way if you wish.

Q. That is the way it was?

A. You can term it that way.

Q. I don't care to term it.

A. The gossip portion of it, I think it was done in a business way.

Q. While you were superintendent did you ever have any communication with any of the officers of the railroad company?

A. I did.

Q. Did you have any stationery for use in connection with your business?

A. I did.

Q. Have you any of that now?

A. I have.

Q. Have you any of it with you?

A. Not of the S. P., no.

Q. How was that stationery marked? What was the name of the company printed at the head of it and on the envelope?

A. If I hadn't heard the testimony here the other day I would have said S. P. Railroad Company, but I don't know whether it was or not **[169]**

Q. Having heard that testimony, are you inclined to modify your former answer?

A. I might modify the form, but not my impression.

Q. You have already testified very positively that this lease was carried on by the Southern Pacific Railroad Company. What I want to know is how was the stationery marked, Southern Pacific Railroad Company or Southern Pacific Company?

A. As I stated awhile ago, having seen the stationery, I can't say positively. But my reasons for thinking it was the S. P. Railroad Company was that J. B. Treadwell told me so.

Q. Are you sure he didn't tell you it was the Southern Pacific Company?

A. No sir; he spoke of it as the S. P. Company and

he spoke of it as the Southern Pacific Railroad Company.

Q. I show you Exhibit J and ask you to examine that and state whether or not that envelope is anything like the one you had?

A. Yes sir; I think it is.

Q. Is it the same kind?

A. Yes sir.

Q. That is "Southern Pacific Company?"

A. Yes sir; "Southern Pacific Company, Railroad Business."

Q. I might also ask you to examine the enclosure. Did you ever see anything like that letterhead?

A. I think I have.

Q. That says "Southern Pacific Company?"

A. Yes sir.

Q. That is the kind you had?

A. I think it is identical. I can't see any difference in it.

Q. And it is a fact that the lease was operated by the Southern Pacific Company for the purpose of getting oil to use[**170**] on the road?

A. You say it is a fact?

Q. Isn't that the fact?

A. I don't care to say that it is the Southern Pacific Company. I was told that it was the Southern Pacific Railroad Company by my immediate superior, no matter what the staionery might read.

Q. The question is: isn't it a fact that the lease was operated for the purpose of getting oil to use

as fuel on engines of the road of the Southern Pacific Company?

A. Of the Southern Pacific Railroad Company, yes sir.

Q. Why do you say "The Southern Pacific Railroad Company?"

A. Because they are operating the Southern Pacific railroad.

Q. Was the Southern Pacific Railroad Company operating any road at all in 1900 or any time while you were employed over there?

A. Were they operating any road?

Q. Yes.

A. They most undoubtedly were.

Q. How do you know they were?

A. I have ridden on their trains.

Q. Did you ever ride on a train operated by the Southern Pacific Railroad Company in your life?

A. I think I have, many a time.

Q. When did you last ride on one operated by the Southern Pacific Railroad Company?

A. On the night of the 14th of this month and the morning of the 15th.

Q. Between what points?

A. Between Dome, Arizona, and Los Angeles.

Q. And you are positive that that was operated by the [171] Southern Pacific Railroad Company?

A. It wasn't the Southern Pacific Fertilizing Company, I know.

Q. And it wasn't the Southern Pacific Company?

A. It was the railroad company.

Q. It was not the Southern Pacific Company?

A. It was the Southern Pacific Railroad Company.

Q. You are positive of that?

A. Certainly I am.

Q. Have you in your possession a return trip ticket?

A. No sir.

Q. Have you any ticket of any kind in your possession?

A. No sir.

Q. From what did you draw the conclusion that on this last trip you made in this month you were riding on a train operated by the Southern Pacific Railroad Company as distinguished from the Southern Pacific Company?

A. Because it is a company that was operating a railroad and nothing else.

Q. How do you know that?

A. It doesn't operate by itself. I know that.

Q. The question is how do you know that it is not operated by the Southern Pacific Company?

A. It may be operated by the Southern Pacific Company, but it is the Southern Pacific Railroad Company. It is simply "McCartey come in," or "come in McCartey."

Q. Have you ever taken a trip across the state of California and Nevada as far as Ogden or any portion of that distance?

A. Nevada? No sir.

Q. Have you ever taken a trip from here to Portland?

A. No sir **[172]**

A. No sir.

Q. Do you know what road is operating across the State of Nevada?

A. No, I do not. I presume probably the Union Pacific.

Q. Don't you know the Union Pacific line ends at Ogden?

A. No, I do not.

Q. Did you ever hear of the Central Pacific Railroad?

A. I heard of it, yes sir.

Q. Where did its line extend?

Mr. Mills—Objected to as wholly irrelevant.

A. I can't tell you.

Q. By Mr. Lewers—Have you ever heard whether it had any line at all?

Mr. Mills—Objected to for the same reason.

A. I think so. There is the Northern Pacific, Union Pacific, Missouri Pacific, and I think there is a Central Pacific.

Q. By Mr. Lewers—Where is the Central Pacific's line?

A. I can't tell you.

Q. Did you ever know?

A. I may have.

Q. Do you know where any portion of it is?

A. I can't tell you.

Q. What line runs through Sacramento?

Mr. Mills—Objected to as irrelevant.

A. I can't tell you.

Q. By Mr. Lewers—When were you in Sacramento last?

A. It was before I went to McKittrick a short time to work for the company.

Q. Over what line did you ride in leaving Sacramento?

Mr. Mills—Objected to as irrelevant.

A. I went from Bakersfield on the Southern Pacific on a pass from Julius Kruttschnitt to nearly the most northern [173] boundary of California—Siskiyou County—and return the same way.

Q. How did the pass read? What was on it?

A. It was telegraphic.

Q. What company was it given by?

A. I suppose it was given by the Southern Pacific Railroad Company.

Q. I don't care what you suppose.

A. I care what I suppose, but I am not positive.

Q. I don't want any supposition, but what was the fact?

A. You will have to suppose this, because I don't know. I supposed it was the Southern Pacific Railroad Company.

Q. As a matter of fact, you don't know?

A. Not positively.

Q. Might it not have been the Southern Pacific Company?

A. It might have been the Salt Lake.

Q. Might it not have been the Southern Pacific Company?

A. It might have been and it might have been the Salt Lake.

Q. Was it the Salt Lake?

A. Not that I know of.

Q. And when you answered that it might be the Salt Lake, you knew perfectly well it was not?

A. You are trying to corner me down that it was on the Southern Pacific Company, and I think it was the Southern Pacific Railroad Company.

Q. Will you read the question? (The reporter reads the question.)

A. How could I tell? They may be controlling the Salt Lake and giving passes. I don't know.

Q. When you answered that it might be the Salt Lake Company, you knew perfectly well that the pass you received was not of the Salt Lake Company? [174]

Mr. Mills—We object to that as wholly irrelevant, incompetent and not connected with any of the issues in this case, any more than an inquiry about a railroad running into Jerusalem.

Mr. Lewers—That may be where the other oil seat is.

Mr. Mills—And I will tell you that if there is any oil there, they will get it.

A. I don't know what company it was.

Q. By Mr. Lewers—you knew it was not the Salt Lake Company that gave you that pass?

A. I don't know whether it was the Salt Lake

Company or the Union Pacific or the Chicago & Alton.

Q. You don't know that it was the Southern Pacific Railroad Company?

A. Julius Kruttschnitt telegraphed the pass to the agent and it was simply a telegraphic pass. What it was, I don't know.

Q. Wasn't it on a railroad message blank?

A. It probably was.

Q. How was that marked?

A. I don't know.

Q. Salt Lake road?

A. I don't know. It might have been. I don't know.

Q. As a matter of fact you don't know what company is operating the road from Bakersfield to Sacramento?

A. I went up in the interest of the Southern Pacific Railroad Company.

Q. I don't care whether you went in the interest of something else. I want to know if you know what company operates that road?

A. The Southern Pacific Railroad Company.

Q. You know that? **[175]**

A. That always was my impression of it.

Q. And was that telegraph blank marked "Southern Pacific Railroad Company?"

A. Since I see a letterhead, I don't know whether it was or not. If I had not seen that, I would have thought it was.

Q. Did you report as superintendent to Mr. Jerome Madden?

A. I never met the gentleman.

Q. Did you ever have any communication from him?

A. I never did.

Q. Did you ever report as superintendent to C. W. Eberlein?

A. I never did.

Q. Or did you have any communications from him?

A. I never did.

Q. When you come down to it, you don't know whether it was the Southern Pacific Company or the Southern Pacific Railroad Company, do you?

A. I was told by my superior, who was supposed to know, that it was the Southern Pacific Railroad Company; that was when I was employed there, during various conversations.

Q. You say Mr. Owen gave you a letter from Mr. Kruttschnitt. Is that correct?

A. Yes sir.

Q. And you don't know where that letter is now?

A. No sir. I think I handed the letter back to Mr. Owen to hand to my bookkeeper.

Q. What was the heading of that letter?

A. I can't say.

Q. Was it the Southern Pacific Company or Southern Pacific Railroad Company?

A. I can't say. I suppose coming from Mr. Kruttschnitt, it would be from his office.

Q. Which company? [176]

A. The Southern Pacific Railroad Company.

Q. Has Mr. Kruttschnitt ever had any official connection to your knowledge with the Southern Pacific Railroad Company?

A. I think so.

Q. Do you know that he has, as distinguished from the Southern Pacific Company?

A. I don't know. I don't know whether there was one in existence.

Q. Although you admit that the letterhead which you had in your possession was probably the same as the Exhibit J?

A. Yes sir.

Q. Never directed your attention that there was such a company as the Southern Pacific Company?

A. No; I didn't give it a thought.

Q. And I don't suppose that you ever observed the inscription upon the engines or upon the cars running upon the lines into McKittrick to see whether that was Southern Pacific Company or Southern Pacific Railroad Company?

A. I probably noticed it, but I didn't give it any thought. I have seen a great many of the Sunset Route, Southern Pacific Railroad Company.

Q. Did you ever see any other mark?

A. I don't believe that I ever saw one of them anything outside of "S. P." on the locomotives, and I think it is "S. P." on the oil cars. I am not sure.

Q. It is "S. P. Co.", is it not?

A. I don't know whether "Co." is there or not. I have seen thousands of cars, but I can't tell you.

Q. Hasn't that attracted your attention,—that they left off the "Railroad Company"?

A. No sir. It is the Southern Pacific Railroad Company in my mind the same as anybody else. [177]

Q. Then that is the real thing in your mind, that you never noticed any such distinction between "Southern Pacific Company" and "Southern Pacific Railroad Company"?

Mr. Mills—How long will you continue to ask this line of questions? The questions for the last half hour have been wholly irrelevant. I don't think you should encumber the record with twenty or thirty pages of it.

A. I never noticed that there was any distinction.

Q. By Mr. Lewers—You are not aware that there ever was such a distinction?

A. No, I never was aware.

Q. And it might have been the Southern Pacific Company that you referred to?

A. I went to work and was authorized by J. B. Treadwell to go to work for the Southern Pacific Railroad Company. That is who I was employed by, to work for the Southern Pacific Railroad Company. I went to McKittrick and went to work for this Company and they paid me.

Q. You are paid by the Southern Pacific Railroad Company?

A. Paid by the company Mr. Treadwell employed me for.

Q. Are you paid by the Southern Pacific Company or by the Southern Pacific Railroad Company?

A. It was the railroad company.

Q. Have you any literature in your possession showing that to be the fact?

A. No.

Q. Might it not have been the Southern Pacific Company that paid you?

A. They might have termed themselves that way on their literature.

Q. Might not they have termed themselves so on their vouchers? **[178]**

A. I can't say. But my vouchers, if I remember correctly, were all made out against the S. P. Railroad Company for the drilling. I made up my own vouchers.

Q. What did you do with them?

A. They were made out in triplicate, I believe, and sent to the Kern River field to the head office, and from there they went through the regular routine at Frisco, and my money was sent to me. I very seldom drew the vouchers. I generally gave the bank at Bakersfield authority to handle it.

Q. And you are very positive that those were in the name of the Southern Pacific Railroad Company?

A. I am pretty sure that I made out my own vouchers against the Southern Pacific Railroad Company.

Q. You are just as positive of that as any other testimony that you have given?

A. I think so.

Mr. Lewis—That is all. **[179]**

I. N. CHAPMAN, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am seventy-four years of age and am a Civil Engineer. I commenced to take contracts for government surveying along in the sixties, I think about sixty-seven. I have continuously followed that business since that date, not always in the government's employ but I have had many government contracts for public survey. At present I am City Engineer of Alameda, California. I can't tell how many government contracts I have had for the survey of government lands but I was in that business many years taking contracts one or two each year. Sometimes they would last for two years or more. I have often been employed to go and examine tracts of land and to classify them in reference to soil and valuations. During my work as a surveyor I have classified many acres of land, amongst which were mineral lands. I have surveyed land in different districts of California for mineral lands or supposed to be mineral lands. My work extended into the County of Tuolumme on the mother lode. I have done work in Eldorado County on the mineral belts. I have also examined mineral lands in Placer County. I have done no special work in surveying oil lands but I have surveyed a good deal of land around where there was supposed to be oil lands and I recognized it as such as it had the proper formation for oil. I did some work over in the oil region in Santa Barbara County. I surveyed Sisquoc lands on the Sisquoc River about twelve miles along the river and about six miles wide. I regarded it as oil formation, sandstone and shale

and mineral seepages all over the land. At that time the country had not been developed for oil. My employer owned the ranch and I told him it was particularly adapted to oil rather than stock raising. Since that time that land has been developed and they have some [180] very fine flowing wells over in that country. I have been in the Bakersfield and McKittrick country and the Sunset several times. In informing myself of the mineral classifications of lands I made a study of formations. I have studied geology. I surveyed the East boundary of Township 30 South, Range 23 East. That was the West boundary of 30 South, 24 East. I think I surveyed in Range 24 and in doing that work I fixed the boundary limits, the Eastern boundary limits of Township 30 South, Range 23 East. This work was done about 1893. When I made that survey, as I remember it, the character of the ground was plainly a sandstone base and it was pretty rough as to topography and very gulchy. There was not much vegetation on it of any kind and no timber. It was a sandstone and shale formation as I remember it. I regard it, from what I have known before and since that, that it was very probably oil land. That was true of the hills there known as the Elk Hills and clear over into the Carisa plains. It is all the right formation to find oil. At the time I made that survey in 1893 I regarded the Elk Hills, and by that I mean the group of hills in which I completed that survey, as oil lands. I did not go any further West at that time but subsequently I went over there to make an examination of

the lands in the Carisa plains. The Elk Hills were rolling hills and pretty well chopped up and did not seem to be very valuable for agriculture. They were dry and parched at the time I was there. I think their elevation was about seven or eight hundred feet. I would certainly think that that country there was more valuable for oil than anything else.

CROSS EXAMINATION
OF
I. N. CHAPMAN.

There wasn't any vegetation there when I was there [181] for sheep or anything else. I didn't remember seeing any bunch grass. I think there is grass in there in the spring of the year. There are times when there is some vegetation towards the summit of the mountain next to Carisa. I didn't see any break in the Elk Hills but the proper formation for oil is there. I am pretty certain I did not report the territory on the East side of Township 30 South, Range 23 East, as oil land. I spoke to the United States Surveyor General about the probability of oil and he advised me not to mention it because it was a difficult matter to prove. When I went down and made the survey on the East line of the township it impressed me as ground that probably might contain oil. I talked it over with my men there at that time and told them that I believed there would be oil discovered in that country and that there would be a great boom in oil. I made no estimate or sufficient examination of the territory to determine the probable depth of that oil.

I talked about it being probably a formation to look for oil in but as to what depth it would be I know nothing about it. I thought it was a place that would bear investigation. I knew it was an oil formation from experience I had had in other places. It is a kind of gamble when you look for mineral anywhere because you have to find it. From such indications as I saw there a man would not be justified in denying that there was oil there because a man would not bore where the surface indications were not there. He would be governed by surface indications. I couldn't say that a man would be justified in saying that from what he observed as to surface indications that the land contained oil in paying quantities.

RE-DIRECT EXAMINATION

OF

I. N. CHAPMAN. [182]

By Mr. Mills:

Q. Would he be justified upon such indications to invest money with the reasonable expectation of getting oil?

A. Certainly he would. He would be justified in making investigations, but he would not be justified in making investigations for oil where he did not have the indications.

Mr. Hills—That is all.

SAMUEL P. WIBLE, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am forty-nine years of age and reside at Bakers-

field, California. I am in the Real Estate Business in Kern County, California. My brother was president of the Bank of Bakersfield and while he was away in Alaska I tended to his business for him. I have lived in Kern County eighteen years and have dealt quite extensively in lands there. I know what is called the Elk Hills just East of McKittrick. I first saw those hills in the Fall of 1893. I had a brother on Miller and Lux's ranch which lies along the canal North of Elk Hills. He was there in 1873. Buena Vista Lake butts right up against the Easterly end of Elk Hills. I became interested in the oil business in Kern County about the year 1898 or 1899. I drilled wells East of the Kern River field. Later on I went to McKittrick and Temblor and drilled out land. We drilled a number of wells in the McKittrick district West of the town. I had charge of the drilling of seven or eight wells there. There was quite a boom there in 1900 and 1901. The boom included the country from the Temblor to Sunset. The land was located as far East as the Buena Vista Lake but there was no development attempted much. During that excitement land was located in Elk Hills. I think the whole of the Elk Hills was located **[183]** at that time. The Buena Vista hills lying South of the Elk Hills were also located. I did not go into the Elk Hills at that time to examine the territory but I went there sometime in the year 1902. I went there to examine them and investigate their oil possibilities. I heard that there was a seepage there but I didn't know just where it was but I saw it afterwards. It was on Sec-

tion 32, Township 30 South, Range 24 East. It is not what you call an oil seepage; it is what you would call a brea bed. Evidently oil or gas had been in it at one time and dried out at the present time. I was examining the land for myself. At that time I didn't have any particular associates. After that the gentlemen who went in with me were: Charles Haperkern, H. T. Tupman, J. Owen, T. S. Klipstein, W. E. Richardson and E. W. McCutcheon. In 1903 or 4 I went through those hills with Mr. Owen. We drove around through the Easterly part of the Elk Hills. He was going to show me the outcrop but we were not able to find it at that time. He said that he would come into the outcrop from the South side of the hills and when he went in from the North side he was not able to locate it. He had been in there before he took me in. We spent a couple of hours looking for this oil showing. Mr. Owen was a geologist for the Southern Pacific Railroad. He informed me that he was and I knew that fact before I went into the hills with him. He was examining and classifying Southern Pacific Railroad land. I observed that he was engaged in going around the country in the vicinity of McKittrick from time to time examining lands. He was there for a year or more. He knew about oil formations. He seemed to be very well posted. He examined practically all the Railroad lands in Kern County and in the Coalinga fields, classifying them. He had examined lands in the Elk Hills in behalf of the Southern Pacific Railroad Company. He first went in there in the Fall of 1901 or the Spring of 1902. The Elk Hills,

from my knowledge, [184] embrace Township 30 South, Range 23 East. All the South half of Township 30 South, Range 22 East, lies in the Elk Hills right over the crest and West of the oil croppings in Section 32 of Township 30 South, Range 24 East. Mr. Owen was a man about sixty or sixty-five years of age at that time. When he and I went into the Elk Hills we went through Township 31 South, 25 East, and Township 30 South, 24 East. We were also along the East line of Township 30 South, Range 23 East. At that time there were no roads from McKittrick into the Elk Hills; we had a team take us out through the hills and then we walked. The Elk Hills are about fifteen miles long and six or seven miles wide. They can be plainly seen from the McKittrick fields. I have discussed with Mr. Owen the geological conditions and oil possibilities of lands in the vicinity of McKittrick. We discussed lands there and formations a great deal. He was very familiar with the formations of that country and particularly with reference to the Elk Hills including Township 30 South, Range 23 East, as well as the other townships there. He told me that he believed the oil measures lay under the Buena Vista Hills and that he thought they lay very deep under the Elk Hills. There is an anti-cline running Northwest and Southeast through the Elk Hills. It can be found in a number of sections just North of the apex of the hills in the canyons. I should say it could be found in a dozen different places just North of the crest of the Hills. There is a very well defined anti-cline in Section 14, Township 30 South, Range 22

East, just at the Northwest end of the Elk Hills where the railroad goes through a gap and this is a continuation of the anti-cline running Northwest and Southeast through the Elk Hills. This anti-cline can be followed over the hills to the Southeast. Mr. Owen was acquainted with that anti-cline. He knew of it before I went into the hills with him and I discussed it with him. I did not know of any other oil evidences in the way of outcroppings in [185] what is commonly called the Elk Hills but there is a decided oil showing in what I would call the North extension of the Elk Hills. It is beyond the railroad tracks to the West. The evidence consists of oil sandcrops in a number of places. As early as 1901 and before 1904 there were two oil wells on section 6 in Township 30, South, Range 22 East, and there was one on fractional section 1, Township 30 South, Range 22 East. These wells were on the same anticline; the one I refer to on the Elk Hills. When Mr. Owen came in there he asked me if I knew anything about the showing about there and I told him where he would find the croppings. I mean croppings on the West end of the hills West of the railroad. He afterwards told me that he had found the croppings that I referred to and found others further east. That was in the Fall, I think, of 1901, or the Spring of 1902. Mr. Owen, before 1904, spoke several times about the oil showing in section 32, Township 30 South, Range 24 East. From a conversation concerning the Elk Hills as oil territory I know he regarded them as such. That would include Town-

ship 30 South, Range 23 East. He seemed to feel quite sure that there were oil lands in the vicinity of those oil croppings on Section 32, Township 30 South, Range 24 East. The formation of the lands in Township 30 South, Range 23 East, and 30 South, 24 East, consisted of shale, sandstone and clay and Fuller's earth and gypsum. Gypsum is scattered there and there is a large body of Fuller's earth in Township 30 South, Range 23 East, and 30 South Range 24 East, and some in Township 31 South, Range 24 East. It is in quantity and quality to make it of commercial value. Mr. Owen knew of the existence of those minerals as he showed them to me. That was in 1903, I think. In that formation Fuller's earth and gypsum generally occur in conjunction with oil. Mr. Owen thought that the oil formation dipped very fast from the West towards the East so as to make [186] it deeper in the Easterly end of the field. If Mr. Owen heard of any oil seeps he hunted them up. That was one of the main things he was looking after when I first met him. He carried maps or plats of the different townships in the Elk Hills and elsewhere. He put down on those plats or maps information that he obtained with reference to the mineral character of the land. We discussed other lands not in the Elk Hills but in the vicinity pretty thoroughly. I was particularly acquainted with Mr. Owen. I was very intimately acquainted with him from 1902 down to the date of his death. I did not know if Mr. Owen was geologist for any other company except the Southern Pacific Railroad Company.

He took charge of the Kern Trading and Oil Company when it was formed. That was later on. They were operating on lands belonging to the Southern Pacific Railroad Company prior to 1904. I think they were organized several years after I met Mr. Owen. At the time that they were organized he was in their employ as a geologist. He started in to locate their wells for them and later on took charge of the drilling operations. I know the Southern Pacific Railroad would withdraw lands from the market upon report of the mineral character thereof by Mr. Owen. Mr. Owen told me it was his business to examine lands and report or price them and have them withdrawn. On the maps I have mentioned Mr. Owen generally colored the railroad sections that were mineral lands. He wouldn't indicate the presence of oil on the map in any way especially, but for the mineral character he colored them all the same. I was in the Eight Oil Company. At its organization it was composed of myself, Mr. Klipstein, H. T. Tupman, E. W. McCutcheon, J. Owen, W. E. Richardson, Charles Haperkern and my wife. When the Eight Oil Company was organized they had lands in Township 30 South, Range 24 East, on the even numbered sections. Some of the people that were interested in the Eight Oil Company had some lands in Township 30 South, Range [187] 23 East. They were myself, Mr. Haperkern, Mr. Tupman and Mr. Richardson. Mr. Owen, the geologist of the Southern Pacific Railroad Company, had eight thousand shares of stock in the Eight Oil Company, the capital stock of which was

forty thousand shares of the par value of one dollar a share. Mr. Owen furnished information of the geological character of the holdings of the Eight Oil Company to that Company. He showed several of us the fuller's earth and gypsum there and told us that it was possible that the old measures lay under there at a depth that could be reached. At that time we didn't think it was possible at the depth that he stated, to drill profitably for oil. We had confidence in his report so far as the existence of minerals on those lands was concerned. Mr. Owen put up his share of the money for doing the development we did there and the locations of the land and the organization of the Company. Those lands were located for oil, fuller's earth and gypsum and other minerals. The lands in Township 30 South, Range 23 East have absolutely no value for agricultural purposes as they are too hilly to be cultivated and there is not enough level land to do anything with. There is no vegetation that grows the year around on those lands but it has some value for pasture in the Spring of the year as there is some bunch grass and filaree that grows there at that time but it was only in a good season that there was any pasturage. The value of that land is for mineral. That land rents for Fifteen or Seventeen Dollars a section. That is what Miller and Lux pay for the rent of the railroad land. Just about the time of the selection of those lands by the Railroad, about 1904, the same lying in Township 30 South, Range 23 East, I discussed those lands with Mr. Owen. We were at that time discussing the mineral probability

of the hills for fuller's earth especially. That is the time that he showed me the fuller's earth. He said if the Railroad selected those lands they would be selecting mineral lands. In other words, they had no right to select them as he had reported them as mineral land. **[188]**

CROSS EXAMINATION OF SAMUEL P. WIBLE.

Those lands were selected by the Railroad in 1904. I know it because I looked at the records in Visalia several years after they were selected and that was the first time I learned when they were selected. Mr. Owen in 1904 did not say that they were selected at that time. He made this remark to me when we were going over the lands and discussing the lands in the Elk Hills. The remark was made on the road between Elk Hills and Headquarters Ranch. No one was present but Mr. Owen and myself and he stated to me that he had reported these lands as mineral lands. At the time of this conversation those lands had been surveyed but the Government had not yet accepted the survey. At least that was my understanding of it. I am quite sure this conversation took place in 1904. The survey had been accepted at the local office and I think it was held up in San Francisco somewhere. I looked it up one day. My dates might be a little off as to the survey but it had not been accepted by the Secretary of the Interior according to my recollection. I think I only made two

trips into the Elk Hills with Mr. Owen. They were made in 1903 and 1904, I think. I think the second trip was made about six months after the first; that was the best of my recollection. This conversation might have occurred in 1903 although I am pretty sure it was in 1904 and this conversation did take place on my second trip with Mr. Owen into that territory. Mr. Owen stated that if those lands were selected by the Railroad they would be selecting mineral lands. I don't think he knew at that time whether they had been or would be selected. I don't think he told me he had anything to do with their selection. He was employed by the Southern Pacific Railroad Company. He told me so. He said he was employed for the purpose of examining the lands and classifying them as to their mineral character and to price them for sale and either to withdraw them or set a price on them and to [**189**] designate the character of the land. I can't tell you what date he told me that because we discussed a great many things together. We got to be quite well acquainted there in the Fall. I know of no such Company as the Southern Pacific Company. The Southern Pacific Railroad Company is the only one that I know of. I have just lately heard of the Southern Pacific Company. I know of a lease in the McKittrick country known as the Southern Pacific lease, both the South-end and North-end. He had charge of the production of those leases along about 1906 or 1907. They were being operated, I understood, at that time by the Southern Pacific Railroad Company. That the oil was used as fuel on the engines of the Railroad and the lease was

operated for the development of oil for fuel and was used by the Company operating the road and the employees of that Company had charge of the lease. I have very good reasons for my conclusion that when Mr. Owen was in charge of these leases he was in the employ of the Southern Pacific Railroad Company. I have drawn my conclusion from good information. He never told me that he was employed to pass upon the character of the land that the Southern Pacific Railroad Company expected to ask to have patented. Mr. Owen was associated with me and others, I think, about 1907 in a location in the Elk Hills in Township 30 South, Range 24 East, in the Southerly half of that Township and sections 26, 28, 30, 32 and 34, all even numbered sections. In 1900 and 1901 there was considerable oil excitement in that country and land was located without any knowledge of mineral character. They located everything that was vacant. As a man of experience in the oil fields I would not make a location of land which had no indication of mineral value on the ground at that time. The mere fact of a location is no criterion as to the mineral value. In 1900 and 1901 locations were made on lands that subsequently developed to have nothing in them whatever. At that date the whole country was [**190**] wild there. You could hear talk amongst oil promoters and prospectors about oil being found anywhere and of indications showing immense values at any old place. You cannot determine whether particular territory contains oil until you develop it. The indications on the surface, such as gas, blow-outs, brea or oil sands,

do not always show that there is a producing bed below that. The presence of brea, or oil sand or gas or blow-outs is only an indication. I have had some experience in lode mining and frequently promising indications do not pan out at all and that is true in the oil business. Mr. Owen said he believed the Elk Hills might contain oil. He said the oil measures lay under them and he thought that they were probably so deep they couldn't be reached and made to pay. I had some conversation with him with reference to some land in Township 30 South, Range 23 East, in which he told me that oil could be reached at three thousand feet or over and we didn't drill because we didn't figure that it would pay to drill for it. At that time there were no such wells drilled in the country to that depth. If we had been told at that time that we had to drill to a depth of three thousand feet where we would strike oil we would have regarded it as prohibitive from a standpoint of cost. Mr. Owen said that there was a good chance. We never drilled there. The Associated Oil Company has drilled on sections 24 and 26 in Township 30 South, Range 23 East. On one of these sections they have gone to a depth of four thousand feet. At that time I would have regarded this depth as absolutely prohibitive. At a number of places through the Elk Hills running from Northwest to Southeast I found evidence of an anti-cline. There are two on the East part of it and one on the West. I have heard it said, although I have never been able to trace it, that there are evidences of the two at the West and that they come together at the East. I know what an anti-cline is. I found both

slopes of the [191] Anti-cline running through the Elk Hills. Both slopes are revealed in those canyons and are very well defined. The North slope is the best defined. I found probably twelve or fifteen indications of stratification showing the North slope of that anti-cline. I did not find the South slope in so many points but where you find the North slope you can find the South slope. I never went in there to find the anti-cline particularly but I noticed it as I was going through. I am certain that I found stratification showing the South flank of the anti-cline. The South anti-cline was quite plain in section 30 of Township 30 South, Range 24 East, and you can find indications of that South slope of the anti-cline in section 32, Township 30 South, Range 24 East, where I found this blow-out. You find the formation dipping to the South and to the North. The thickness of a section of the stratification revealed on the South side was probably fifty feet. That line of stratification dips to the Southwest. The materials shown in these strata is sandy clay and fuller's-earth. The fuller's-earth strata shows very prominently. When I first went to McKittrick I was engaged principally in the laundry business until I sold out in 1901. I then went into the oil business and farmed South of Bakersfield. I met Mr. Owen frequently on the train going in and out to Bakersfield. I was not with him on all the trips he made through that country. He went a great many places without my being with him. I don't pretend to be able to say what he was doing on these trips, only what he told me and I was not with him so as to observe what he was putting down

on those maps I referred to. I made but two trips with him into the Elk Hills. At that time we didn't see any blow-outs and it was a year or two later that I found the blow-out. I don't think I made over four or five trips with Mr. Owen in the field although I met him frequently on the train. I have sold four or five tons of fuller's-earth at Fifteen Dollars a ton from our location in [**192**] Township 30 South, Range 24 East. We have a location also in Township 30 South, Range 23 East, but we never sold any fuller's-earth from it. We have had it tested and find it valuable commercially. It lies on the ground in strata with soft material over-lying it and you have to remove this material in order to get the fuller's-earth. It is not a very expensive process to get it out as you can get lots of it out without removing very much covering as it is not covered very deep. It is quoted in San Francisco from twenty to thirty dollars a ton depending on the purity. I think we could get it out and haul it to the mill for a dollar and a half to two dollars a ton, and it costs about a dollar a ton to refine it, the total cost being not to exceed four dollars a ton. I was never employed by Mr. Owen or anyone else in connection with the oil properties of the Southern Pacific Company. Mr. Owen, when he took charge of the Kern Trading and Oil Company, was employed under Charles W. Eberlein. He worked under instructions from Eberlein. He came with a letter from Mr. Eberlein with instructions to tell me to stop work on the land. I think that was in 1907 or '8 but not prior to January 1, 1905. Mr. Owen never did tell me he was employed under C. W. Eberlein.

I was very intimately acquainted with Mr. Owen. He never told me about reporting to Mr. C. W. Eberlein but he reported to Mr. E. T. Dumble. I saw Mr. E. T. Dumble in a number of places in the field prior to 1905. He was with Mr. Owen. I know about the Government lands in the Elk Hills being withdrawn from entry or location in 1909 by the United States Land Office in Washington and I discussed it with Mr. Owen. I heard of the Buena Vista Hills being withdrawn in 1900 but I can't say whether the Elk Hills were included in that or not. I heard of the Cancellation of that withdrawal order. I think it was about 1902 or 1903. There was a special agent of the General Land Office from Washington examining that land between the time of the withdrawal order of 1900 and the cancellation of that order in 1903. I saw [**193**] that special agent at McKittrick and in Bakersfield. He was in and out of the vicinity of McKittrick three or four years and I heard that as a result of his report the withdrawal order had been cancelled. At that time I knew very little about the Elk Hills. Prior to January 1, 1905, the chief activity in the development and production of oil was right in the immediate vicinity of McKittrick and West of it. It did not extend much North. The attention of practical oil prospectors was devoted more to the territory around McKittrick and to the West of McKittrick and leading down towards Sunset. They didn't go across the valley to the North as that was not territory which at that time attracted practical oil men.

RE-DIRECT EXAMINATION OF SAMUEL P. WIBLE.

Speaking of the conditions of the land as to being covered with locations in that territory during that stampede in the early part of 1900 and 1901 I didn't say that none of those locations were made upon good evidences of oil. There were locations that I know of which were made by parties other than those who were merely speculating on the possibilities of oil. Most of the operations were carried on under the advice of a geologist and I considered Owen one of the best in the field. All of our locations were made on the advice of competent men. Among the competent men to whom I refer were Mr. Treadwell and Mr. Youle. We went under their advice in 1904. The deepest well in that vicinity was a little over two thousand feet. There was no limit to the depth of wells that could be drilled in that vicinity that I know of. It was the general custom of oil men to drill until they got oil then quit and generally they got oil under shallow depth and did not attempt to go deeper. There [194] had been no drilling in the deep territory in the Elk Hills at that time except this deep well that was a little over two thousand feet which was not in the Elk Hills but was in the Northwesterly extension of the hills. I do not know the limit of the depth to which a well could be drilled in 1904 and made profitable. The depth they could drill would depend largely on the formation you had to go through. I don't know of any limits now placed on

the depth of an oil well. They keep going a little deeper every year. The well drilled by the Associated Oil Company on section 24, in Township 30 South, Range 23 East, went to a depth of thirty-two hundred feet and the one on section 26, Township 30 South, Range 23 East, according to my information, went a little over four thousand feet. The well on section 26 produced oil. In drilling these wells they used a standard rig and a rotary rig. I don't know if the well on section 26 was a paying well. The well on section 24 never produced any oil. It might if they would open it up. They have the oil shut off in the casing. There was a contest made over section 16 in Township 30 South, Range 23 East, by a man of the name of Joe Randall who was an agricultural entryman. He attempted to raise a crop there. It was the best year for moisture that I have ever seen in the Elk Hills. I don't know whether he got a crop. I didn't see it after it ripened but I saw it after it began to ripen and it was a very small crop. There was some barley that would have made a little hay. There would be no possibility for Joe Randall or anyone else to raise a crop on that section this year or any ordinary year. Other than Mr. Owen telling me that he was an employee of the Southern Pacific Railroad Company I have seen documentary evidence in his possession. I saw his pass issued to him by the Southern Pacific Railroad and it read: "Chief Geologist of the Southern Pacific Railroad." From 1903 to 1908 the oil business in the McKittrick vicinity was very dull and there was practically [**195**] no new developments on account of the price of oil and

lack of facilities for getting rid of it. It was only once in a while you could get cars and for that reason you couldn't contract for the oil. The activity stopped almost entirely. The lowest I know of oil being sold for at that time was Eleven cents a barrel.

RE-CROSS EXAMINATION
OF
SAMUEL P. WIBLE.

It sold for eleven cents, I think, in 1903, but in 1904 I think we got fifteen cents a barrel for what we could sell. Some locations were made in 1900 and 1901 during the time of the great rush under the advice of competent geologists. None were made at that time that I know of in the Elk Hills under the advice of competent geologists. I saw Mr. Owen riding on that pass on the branch line between McKittrick and Bakersfield and the Conductor accepted the pass. I don't think I could be mistaken about the name of the Railroad Company that was on that pass. I would modify my statement, that the unsurveyed portions of the land was of no value for there is some land in Township 30 South, Range 23 East, which, if there was water put on it would be valuable enough to grow some crops. It is also worth something for grazing but very little. I have seen cattle on there but I have never seen any sheep in there. **[196]**.

CHARLES BRISCO, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I reside in McKittrick. I have been living there a

little over a year. I first went to McKittrick in 1897 or '8 and I remained there until August, 1904. I know about the oil seepages or oil indications in and about the town of McKittrick and the hills there. Those indications consisted of oil running out of the ground and seeping and gas pockets and places where the gas was bubbling up. When it would rain the gas would bubble up and oil would run out down the hill. I guess I noticed this around there in a hundred places. I also noticed evidence of waste of oil there in former times. There was what we called a Tar Flat. We never did anything with that Tar Flat because in the summer time you could hardly get across it and dogs and squirrels and everything would get stuck in it. This Tar Flat was about a half mile South and East of McKittrick. I have been engaged in the business of prospecting, mining and developing oil in the vicinity of McKittrick. That is what I went in there for. When I first went in there I drilled for a Company called the Shale Basin. I worked for them three or four months and I also worked for other people. I found a small brea bed—dried oil—dried asphaltum—there in the Elk Hills but I don't remember seeing any in Buena Vista Hills. I found this in the East slope of the Elk Hills about twelve or fifteen miles South and East of McKittrick. This was about 1901 or 1902. It may have been earlier than that. I never heard of it before I found it but I reported my discovery to several people. Before 1904 I took a man by the name of Owen, who was a mineralogist for the Southern Pacific, over to this brea bed that I found in the Elk Hills. At that

that asphaltum was. Mr. Martin made notes as we went along to identify the places to which we went. Mr. Owen referred to the character of the oil which would be produced in the Elk Hills. He said he thought it would be better as it would be deeper and there would be more gases in it. By that I mean that the oil would be lighter. Professor Owen told me that the team we used on that trip was the Southern Pacific's team. I know Mr. J. B. Treadwell. He operated in that country before I went on that trip with Mr. Owen. He was the Superintendent there for the Southern Pacific and during that period he brought in quite a lot of wells, I should say ten or fifteen. He told me that he had charge of the oil business in that part of the territory at that time—that division I think he called it. I remember the oil rush in 1901, 2, 3 and 4. I think the country [**199**] at that time was pretty well located and there was considerable excitement. I was not personally acquainted with E. T. Dumble. I heard that he was with the Southern Pacific and that he had control of the wells a great deal then and worked in conjunction with Mr. Treadwell. He and Treadwell were out in the fields a great deal together looking over the territory to see what it was good for. I met them several times. On three different occasions I showed Mr. Owen lands in the vicinity of that field which he regarded as valuable for oil. There was a depression in the oil business in McKittrick I think, in 1901, 2 and 3 and it continued a year or two after I went away from there in 1904. During the time that I was there I was actively engaged in the business of prospecting and

development. The cause of the depression was our inability to get rid of our oil. We couldn't sell and we couldn't get it out of the field because there were no facilities for transportation. We would order cars but we couldn't get them. I know that on my recent trip with Mr. Martin that I pointed out to him substantially the road taken by me and Professor Owen on the occasion that I mentioned.

CROSS EXAMINATION
OF
CHARLES BRISCO.

I applied to J. B. Treadwell for cars and he said he didn't have any. If we had had cars at times we would have had a market for our oils. I don't think the depression was due to a lack of market. Our company claimed that they had sale for the oil but we couldn't get it to the market. I had charge of the shipping for awhile. I knew that cars were loaded but I don't know who they were loaded for. This car shortage was quite general. I think the oil excitement in that district ceased about 1901. That is, the rush of the locations and so on. During that [**200**] excitement people located anything they could get on to whether it had a surface showing or not and a great many of those locations never had any work done on them at all. Mr. Owen told me he was experting territory as Mineralogist for the S. P. He told me that on several occasions in 1903. He was not a very talkative man about his business. Was rather secretive and would not talk much to those with whom he was not intimate. There is no asphaltum at the place in

Elk Hills to which I took him. It is merely oil oozed up and dried in the dirt and shale. As Mr. Owen explained it to me it was a fissure that had been blown out there. There was dried oil there, that is it was dried in the dirt and shale. I never made a test to determine whether or not it contained oil and my statement is based upon my observation and upon the test I made with the match when I lit it as it would burn and you could smell it. You could take a piece of that substance and light it with a match. When I was there with Mr. Martin and showed the place to him he told me it was in section 32 or 23, Township 30 South, Range 24 East. This deposit is ten or twelve miles West and a little East of the location of the Headquarters Ranch. You can see the Headquarters Ranch from the top of the hill but not from the brea bed. I was not very familiar with the country from Elk Hills down to the Headquarters Ranch. I never was down through that way. I should judge this brea bed is twelve or thirteen miles from McKittrick South and East. It was not in the Buena Vista Hills. It was in the Elk Hills. I couldn't say that it was on that first trip that Mr. Owen told me what his occupation was. He said he was experting and was a Mineralogist for the S. P. or the Southern Pacific. It was on that trip that he told me that the Elk Hills were good oil territory. I used to dig into him quite a bit so as to get some talk out of him. It was pretty hard to dig any talk out of him. The reason that made me do that was that I had some land located [**201**] and I thought he had pretty good judgment and I dug into him to ask about that land.

I told him: "I have got some land located there myself and I would like to have you go in there to see what you think about it." After I got him in there I kept asking him and I asked him two or three times before I got any answer and then he said: "This is good enongh, my boy, hang on to it." I hung on to it as long as I could, three or four years. This land was almost East and South from McKittrick. It was not as far South as we went down into. It was located six or seven miles from McKittrick in the Elk Hills. I don't remember what section it is but it was in the same Township as McKittrick is in. It was three or four miles South of where the railroad passed the cut through the Elk Hills at the Western end. I do not remember the number of the section. (Here the witness placed his finger upon a point in Government Exhibit "I" at about the place where this location was made and the record shows that the witness points to Township 30 South, Range 23 East). Mr. Owen did not tell me that he knew there was oil at the place where I had my location or that he knew there was oil in that part of the Elk Hills. I have seen brea deposits that didn't show by future development the existence of oil but in my experience, wherever you find brea it is an indication that there is an oil belt there or near there somewhere and it has been oozed out there by the gas. It may be a mile or it may be a half mile or it may be right there and it may come straight up. That is my experience in brea. I have known wells to be sunk near those deposits and off to the side to some distance and yield no productive well. Where the Southern Pacific

drilled up on the brea bed at McKittrick they drilled right into the brea and got a dry hole within twenty feet of where they got a well. It is by no means a certainty that there will be oil underlying any particular territory on account of that indication but it was a sure indication that there [**202**] was oil near there somewhere. Mr. Owen on that trip took dips and samples and so on. That was his business. He told me he thought the territory was very deep and I had no reason to doubt his statement and that was the impression of everyone. I don't know of any person at that time that actually knew of the existence of oil in the Elk Hills. We believed it to be there by reason of its contiguity to proven territory and the indications of the surface were just as good there as anywhere all over that territory. I didn't endeavor to locate any anti-clines in the hills but Mr. Owen did. I merely went with him there to show him that brea on that location. I didn't pay any further attention to the land after I located it for about two years as I was sick and was trying to die more than I was looking for an interest in oil lands then. Before I left McKittrick the last time I was in the hills was when I went out there with Mr. Owen. Mr. Owen was not developing oil properties. He was on the road getting samples and looking the territory over and that was all I ever did know of him.

RE-DIRECT EXAMINATION
OF
CHARLES BRISCO.

If we had drilled a well in the Elk Hills we could not have shipped any oil. I know the S. P. or the

S. P. Railroad Company had cars to ship their oil during that depression. [**203**]

F. OSKAR MARTIN, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am the Mineral Inspector of the General Land Office of the Interior Department. I have had experience in engineering and surveying. I was assistant in the soil survey from 1901 to 1905. I was then appointed on the Engineering staff of the Isthmian Canal Commission and served on the canal as Assistant Engineer for one year. Returning to Idaho I was a licensed land surveyor of Idaho. I also held commissions as United States Deputy Mineral Surveyor to Idaho and Montana for three or four years. I know Mr. Charles Brisco who testified in this case yesterday. I made a trip with Mr. Brisco into the Elk Hills on the 24th of February, 1912. At that time Mr. Brisco pointed out to me the lands which he and Mr. Owen some years before had gone over together. I identified the lands from the section corners or the government stakes. I showed Mr. Brisco two section corners which he recognized as being the same ones that Mr. Owen and himself at some prior time had seen. I am the Mr. Martin referred to by Mr. Brisco in his testimony. I took Mr. Brisco to the Southwest corner of section 33, Township 30 South, Range 23 East, and he recognized the corner as being the same which Mr. Owen and himself had started from. He pointed out to me the route which Mr.

Owen and himself had taken going in a Northeasterly direction towards the summit of the Elk Hills. Mr. Brisco and I went back to the team and rig from said corner and traveled through sections 32 and 29 to the summit of the Elk Hills. This was in Township 30 South, Range 23 East. We then went Easterly along the summit until we came to the common corner of sections 26, 27, 34 and 35, same township and same range, which Mr. Brisco also recognized as having been seen by him and [**204**] Mr. Owen. Mr. Brisco and I then went along the summit of Elk Hills into section 31, Township 30 South, Range 24 East and then followed the spur trending in a Northerly direction to the gas or oil seepage which Mr. Brisco recognized as having been the same which he and Mr. Owen had been to. This seepage is situated in the Northwest quarter of Section 32, Township 30 South, Range 24 East. We then returned to the summit and while driving slowly along the summit in a Westerly direction Mr. Brisco pointed out to me the route which he and Professor Owen had taken. From this route which we traveled you can see on either side Northerly or Southerly all over the country. Mr. Brisco pointed out to me from the time we entered the Elk Hills all the lands which he claimed he and Mr. Owen had previously traversed. I made a map from the notes which I took at that time. As a base for the map I used a photo-lithographic copy of Township 30 South, Range 23 East, (Plaintiff's Exhibit "K"). The green line on this map is the route traveled by Mr. Brisco and myself and the red line is the route as traveled by Mr. Owen and Mr. Brisco.

The photo-lithographic copy which I used as the base of this map is from the files of the General Land Office, Washington, D. C.

CROSS EXAMINATION
OF
F. OSKAR MARTIN.

When I went with Mr. Brisco we followed the route that Brisco pointed out to me that he had taken with Mr. Owen as far as the first section corner which would be down at the South line of the Township and from there on we could see the summit. The only place where our routes crossed was in the Southeast of section 27. In other places we were as much as a mile or two from the route traversed by Mr. Brisco and Mr. Owen but we were always in sight of the route. [**205**]

RE-DIRECT EXAMINATION
OF
F. OSKAR MARTIN.

Mr. Owen and Mr. Brisco traversed through sections 33, 34, 24 and 26, Township 30 South, Range 23 East in a Northeasterly direction. Thence to the East entering Township 30 South, Range 24 East they traveled in a Southeasterly direction to sections 30, 29 and 32. This route was visible at all times from the route which Mr. Brisco and I took.

RE-CROSS EXAMINATION
OF
F. OSKAR MARTIN.

There was nothing to prevent Mr. Brisco and me from following the route that Mr. Brisco had taken

with Mr. Owen but it was not necessary because one can see two or three miles in any direction. Prior to the time I went over this route with Mr. Brisco I had been over every section there a number of times and had located all the different section corners and I was reasonably sure of knowing in what particular section any land was that I was looking at from the summit. The general route which Mr. Owen and Mr. Brisco took is the same as outlined in Exhibit "K" by the red line. The reason we did not follow the same course followed by Mr. Brisco and Mr. Owen all the way was because Mr. Brisco had an engagement in McKittrick that night and was in a hurry to get back. The chief purpose of my trip was to learn whether or not Mr. Brisco and Mr. Owen had found the gas and oil seepage in Section 32, Township 30 South, Range 24 East, as I regarded that as the important thing. I had been over that ground lots of times before so I knew at the time I was out with Mr. Brisco what Mr. Owen did see as he traveled over that ground. [**206**]

RE-DIRECT EXAMINATION
OF
F. OSKAR MARTIN.

I knew from personal observation made prior to my visit with Mr. Brisco what the situation in each particular section was as he pointed them out to me and it was wholly unnecessary to visit those places traversed by Mr. Owen and Mr. Brisco in 1903 as I knew it as well as if I had traversed it over again with Mr. Brisco.

RE-CROSS EXAMINATION
OF
F. OSKAR MARTIN.

Whatever conclusions I drew as to the character of that township I based upon a very careful examination of the entire township and surrounding country. I have seen those very things which Mr. Owen must have seen.

T. E. KLIPSTEIN, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I reside in Bakersfield. I have lived in Kern County twenty-three years and am Secretary of the Eight Oil Company. I was one of the original organizers of that corporation. Associated with me was S. P. Wible, H. T. Tupman, C. F. Haberkern, W. E. Richardson, E. W. McCutcheon, J. Owen and G. G. Wible. The company was organized April 9th, 1909. I know Mr. J. Owen. He is the same gentleman that has been referred to in the testimony here during the last few days. Mr. Owen had two thousand shares of stock in our company. At the time of the organization he had eight thousand shares. We were organized for fifty thousand and thirty-four thousand shares were issued. At the [**207**] present time Mr. Owen's representatives own two thousand shares. I know Mr. E. T. Dumble. He has two thousand six hundred and sixty seven shares of our company's stock which was issued to him on October 6, 1909. Immediately subsequent to the time of the incorpora-

tion of the Eight Oil Company their holdings in Kern County consisted of the North half of section 31, and all of the South half of Section 32 in Township 31 South, Range 23 East, M.D.M.; all of the South half of Section 4, Township 32 South, Range 23 East; all of Sections 26, 30, 32 and 34 in Township 30 South, Range 24 East; all of Sections 20, 22, 24, 26, 28, 30, 32 and 34 in Township 30 South, Range 23 East; all of section 4 and the North half of Section 8 in Township 31 South, Range 24 East. Section 24 in Township 30 South, Range 23 East, has since been conveyed to others. Our company has been engaged in the business of prospecting and mining and development in Township 30 South, 24 East. We have declared dividends on the capital stock and the estate or heirs of Mr. Owen have received dividends amounting to $15,225. This was paid only on the two thousand shares. Dividends to the amount of $20,-502.53 have been paid to Mr. E. T. Dumble. Mr. Dumble has voted his stock by proxy within the last year. He sent his proxy by letter signed by himself. (The letter is here identified and read into the record as follows: "Southern Pacific Company. Office of E. T. Dumble, Consulting Geologist. Form 2621 B. In reply refer to No. Houston, Texas, April 6, 1912. I hereby appoint Erwin W. Owen as my proxy to represent me at the meeting of the Eight Oil Company to be held at Bakersfield on Friday, the 12th day of April, 1912, for the purpose of election of Directors and for the transaction of such other business as may properly come before the meeting, and hereby empower him to vote the stock standing in my name,

amounting to two thousand six hundred and sixty-seven (2667) shares. Signed E. T. Dumble. Witness: G. T. Carnes. E. M. Johnson.") [208]

CROSS EXAMINATION OF T. E. KLIPSTEIN.

Dividends were paid at different times and since the stock was issued, I think in all four times. The first dividend was paid in 1910. The lands held by this company were first acquired in December 1907 and January, 1908. The only work this company has ever done was in township 30 South, Range 24 East.

CHARLES F. HABERKERN, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am forty-six years of age. Am a resident of Bakersfield and have resided in Kern County thirty odd years. I have been engaged in the development and mining or prospecting of lands in the Elk Hills and vicinity for the minerals contained therein. I am one of the original locators of the Eight Oil Company in that section and I am Director of that Company. I knew Josiah Owen during his life time. I knew him very intimately. I have been in the Elk Hills with him remaining there as long as five days at a time. When we were out there we stopped at the Headquarters ranch belonging to Miller and Lux. We looked all over the country and I showed him the minerals I found there. The first time I went in

there with him, in August or September, 1904, we went all over the Elk Hills from one end to the other on both sides of the slope. I couldn't say just what year we went but we went all over the Elk Hills, all over those sections. We did not go to the flats, we went just to the hills. I know where Township 30 South, Range 23 East is and in our examination we passed over the lands in that township. I refer to the lands of that township which lie [**209**] in the hills and which would be the South half of the township. We also went to the townships to the East and to the West of that in those hills. I know of an oil showing, or outcrop, or gas blow-out, in the Northwest quarter of Section 32, Township 30 South, Range 24 East. At that time Mr. Owen and I visited that oil seep and we also went all over the township and Mr. Owen made a careful examination of the lands through the hills and at that time we discussed the possibility of that country for oil, fuller's-earth and gypsum. He told me the land is very valuable for fuller's-earth and gypsum but he thought there was oil there but that it was very deep and it wouldn't pay to go after it. The showing on Township 30 South, Range 23 East, looked good enough to me to afterwards locate the lands there. My associates and I, in pursuance of that examination made by Mr. Owen and me, later located lands in Township 30 South, Range 23 East. We located the even numbered sections. The reason we didn't locate any odd numbered sections at that time, although I wanted to do it, when Mr. Owen and I went out again he said that he was working for the railroad company and not to take any railroad land.

By the railroad lands I understood every odd section is railroad land in Township 30 South, Range 23 East. That township was not surveyed in 1901 but was surveyed later and the stakes were visible on the land. Mr. Owen was experienced in going about the hills and he found the corner stakes and the center stakes. I have four thousand shares of stock in the Eight Oil Company. It was called the Eight Oil Company because there were eight locators. After the Company was organized Mr. Owen told me he wanted to get some stock in the Company for Mr. Hunt and Mr. Dumble and this was arranged. Mr. Owen was employed by the Southern Pacific Railroad Company examining lands and looking after their oil interests. He claimed to be a geologist. I understood that Mr. Dumble was the head man of the [**210**] Southern Pacific Railroad Company on this coast in the oil and mineral matters. The statement Mr. Owen made to me about keeping off the odd numbered sections in Township 30 South, Range 23 East, was made in August or September, 1904.

CROSS EXAMINATION OF CHARLES F. HABERKERN.

The first location I made in Township 30 South, Range 23 East, was in 1907. I had been there I presume, about a dozen times with Mr. Owen. At the time I made location in 1907 Mr. McCutcheon was with me. I followed Mr. Owen's suggestion about not locating anything except even sections. The first

time Mr. Owen went in there with me in 1904 I showed him some mineral that I found in there. I took it for fire clay. The place where I found it was West of the Headquarters Ranch. I didn't remember what section or township it was in but we found fuller's-earth and gypsum all over those hills. We didn't make any locations at that time and not until three years later although Mr. Owen was in the hills with me a number of times during the interim. It was in 1907 that we made our locations on the even sections. I don't know if the odd sections at that time had been patented to the Railroad. At that time I was living in Bakersfield. I probably saw the "Morning Echo", the Bakersfield paper, in 1904 from time to time. The reason we did not locate before 1907 was because after we found out that we had that fuller's-earth Mr. Owen sent it to different chemists and got reports and it was dull times and we couldn't do anything with it; money was scarce and that is the reason we didn't locate at that time. All of the development work of the Eight Oil Company was done on Township 30 South, Range 24 East. The claims in Township 30 South, Range 23 East, don't belong to the Eight Oil Company. I have an interest in that Township, and we developed it. [**211**] The sections that I was interested in in Township 30 South, Range 23 East, were: Sections 20, 22, 24 and the North half of 26 and 28. We have never sold any gypsum or fuller's-earth from these sections and I have never heard of any being sold. The deposits of fuller's-earth and gypsum in Township 30 South, Range 24 East, are exactly the same as are those in

Township 30 South, Range 23 East. The dividends that were paid were derived from the sale of land in section 32, Township 31 South, Range 23 East and no dividends have been derived from the sale of fuller's-earth or gypsum. Perhaps a month before we made our locations in 1907 we talked the matter over with Mr. Owen and he said to locate on the even sections in 30 South, Range 23 East. It was a couple of years before that when he said that he was working for the Railroad and to let the Railroad land alone. It would be difficult for me to fix the exact time when anything particular was said by him. When we used to go out together we would sit together evenings and talk two or three hours. I know positively when Mr. Owen and I went out into the Elk Hills the first time and I showed him the railroad land where the mineral was on and I said, "How about locating those?" and he said, "No." That was the visit there in August or September, 1904. After that we didn't discuss any more railroad lands in regard to locating them because I knew Mr. Owen didn't like it. On that first trip it was when he said if there is any oil there it would be very deep and he said it wouldn't pay and the only thing that was there that was worthy of any attention was fuller's-earth and gypsum at that time. Mr. Owen made inquiries at that time as to what fuller's-earth was selling for. At the time we made our location in 1907 the nearest producing oil well was at McKittrick and no oil had been found in the Buena Vista Hills. In 1904 when I went into the hills with Mr. Owen he told me there is a possibility of oil there, that it was very deep,

from three to four thousand feet. [212] It would not pay at that time because oil was very low at that time. I did not know of any wells at that time that were that deep and such a depth was regarded as prohibitive at that time by a practical oil man. I did think it might be oil territory and I didn't pass it up altogether. I know Mr. Owen was working for the Southern Pacific Railroad because he told me so hundreds of times. I am positive about that. Mr. Dumble told me that he was head man from Texas to California of all mineral, coal and oil and other minerals for the Southern Pacific Railroad Company. Mr. Dumble told me that he was producing oil for use on the engines of the railroad. That he was the head man for oils for the roads and was producing in Kern River, McKittrick and Coalinga and that he had charge of the production of oil for fuel on the lines of the Southern Pacific Railroad Company.

RE-CROSS EXAMINATION OF CHARLES F. HEBERKERN.

When I rode over the Elk Hills with Mr. Owen in August or September, 1904, I showed him some lands where there was a lot of fuller's-earth and gypsum and I said, "There is a section" and I told him what section it was. He said, "Mr. Haberkern, don't locate that land. It is Railroad land. I am working for the Railroad Company myself and it wouldn't look good for me to locate the land," and it was marked "S.P.R.R." on a map he had with him. I am

positive that that was stated in that conversation on our first trip and not when I made our locations in 1907 because I never mentioned Railroad land to him afterwards because I knew he wouldn't like it if I would locate it. I am positive that he said in August or September, 1904, that the Railroad then owned the land. In that conversation in 1904 in the Elk Hills he stated that the odd sections were as good as the even; that the Railroad lands in that township were just as good for mineral as [213] the even sections.

W. G. SYLVESTER, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I reside in Bakersfield and have lived in Kern County since 1899. The oil boom had just started when I came there. I know where the Elk Hills are, East of McKittrick. I have been in those hills. The first time I went in there was about the first of January, 1900. I went in looking for mineral locations, petroleum and oil lands. I went from Bakersfield and took a surveyor and a crew of ten men with me. I found the land mostly unsurveyed and we had it surveyed. We spent about three weeks in the Elk Hills. We went all over the territory and surveyed out some of it and located it. I went thoroughly over the surface of the ground in the territory riding over the hills. I think I went over Township 30 South, Range 23 East. I made investigations of those hills for the purpose of ascertaining if there was any evidence of its being oil territory. I didn't

have any particular knowledge of oil formations or oil sands except what I could see. I made examinations of the surface indications. At the time I arrived there there was another party in there locating at the same time. His name was Jeff Packard. He had with him quite a number of riders and we were both after the same land. I found evidence of oil there. We started from Headquarters Ranch house and started to survey from a stake there at one of the ranch corners. We had gone into the hills several miles West and we saw indications of what I would call asphaltum. I don't remember what section it was on. It was possibly four or five miles West and possibly a little South of the Headquarters Ranch. We found a rather recent oil seepage which was somewhat dried out although it would burn giving off an odor like coal [**214**] oil or gasoline. We found this seepage in a gulch and we found asphalt high up on the hill. I located about ten or twenty claims at that time. Packard located in the neighborhood of one hundred or a hundred and fifty, I think. We sort of ran a race to go out and locate the land. He got wind of the fact that we were going to locate the land. We left before he did. He came out horse back and got quite a number of riders from the Headquarters Ranch house, however, parties who were familiar with the territory and I think along about daybreak or 3 or 4 o'clock they came out. The first day we got started we found them in the field with their notices out and running out the lines on horse back. I don't know how they got their lines as it was unsurveyed at that time. We finally compro-

mised with Packard to take an equal share with him of all the lands located. I think there were a hundred and fifty-seven claims located in all, each claim covering a quarter section. With reference to the place where we found the asphalt we located in every direction with the exception of North. The locations may have extended over the North side of the range summit line. I am uncertain. I don't know how much Packard spent but I spent between eight hundred and a thousand Dollars. Our locations extended into four townships, 30 South, 23 East, 30 South, 24 East, 31 South, 23 East and 31 South, 24 East. Our locations lapsed because we couldn't do anything with them. I tried to but I couldn't get anyone to drill as they considered it wild-catting to go in there. We held onto the claims for a couple of years when a greater part of them were re-located after 1902 by the Packard interests. The low price of oil made the attempt to produce oil then too expensive and too risky and made it hard to do anything with it. I believed those lands to be oil lands susceptible of development and production on a commercial basis at the time I made my locations as I went so far as to put down a hole just a little [**215**] North of there on Section 8 in Township 30 South, Range 23 East. That was 1901. We went down 980 feet. A man by the name of Brisco, who testified here, was the driller. The Empire Oil and Development Company, in which I was the heaviest owner, sunk the well and Brisco was employed by us. We abandoned that well in 1901 because there was so much gas that the drilling became so expensive that we couldn't stand the

pressure and had to quit. I don't think we found any oil in that well. I was there at different times when they were drilling. After we got down 980 feet we concluded we would quit drilling and I never went back. We left the boilers and the complete outfit there. I am sure this was on Section 8, Township 30 South, Range 23 East. As to the agricultural possibilities in the Elk Hills for raising crops I think a man would have a picnic raising a crop there as the hills are pretty steep and there is absolutely no water. There is no flat land there excepting the valley between the Elk Hills and the Buena Vista Hills. In a good season I believe there would be grazing anywhere in the hills. I found some gypsum and fuller's-earth in my investigation of the Elk Hills. I also noticed the stratification all through there. I found stratification in the Elk Hills. You can see it in almost any of the gulches. I am not a geologist but it didn't require a geologist to see it at the time I went into the Elk Hills. When I went into the Elk Hills there was an oil excitement in the vicinity of McKittrick which kept up for several years.

CROSS EXAMINATION
OF
W. G. SYLVESTER.

The course of the anti-cline was Northwest and Southeast. I presume it was one anti-cline but you could find it in a dozen different places. I started from Bakersfield to locate in the Temblor Hills on account of the oil excitement. The cause of [**216**] that excitement was the discovery of oil around the

vicinity of McKittrick. We stopped over night at the Headquarters Ranch house and the surveyor I had with me told me that he thought it was ridiculous to go any further, that those hills around there were probably as good as the rest. He said he had been over the hills and they looked as good as the rest and I followed his advice and went to the Elk Hills instead of going beyond McKittrick. I was anxious to locate as many as I could in as short a time as possible but Packard had the advantage as his men were all horseback and he got more claims. There was some dispute about the accuracy of the locations and I persuaded him to knock off a number of his claims. We didn't discover anything until we found this asphalt that we saw. At that time I didn't know that a discovery was essential to a location. Our idea was to cover as much territory with proper monuments and notices as possible. I really don't know whether what we found would be called asphalt. It was a formation similar to the blow-outs they have at McKittrick. I presume asphalt is oil sand which has dried out but I don't know what asphalt is. I don't remember whether the seepage was right close to the vicinity of the blow-out but my recollection is that it was in a deep gulch close by the blow-out. They were not very far apart, probably in the same section in Township 30 South, 24 East, I think, about four or five miles Southwest of Headquarters Ranch. I found no such indications in Township 30 South, 23 East. I did not find any oil men from McKittrick in there trying to locate when I got there. At that time Packard was Marshal of Bakersfield and I was practising

dentistry and neither one of us was a practical oil man. After we made our locations I did nothing further. I did not ever re-locate them. I think Packard re-located those lands two years later. A great many competent oil men came into the country about that time. I didn't see any indication [**217**] of oil, only what we saw in the hills and over in the gulch. The well I sunk in 1901 was on section 8, Township 30, Range 23 East and it was in a spur of the Elk Hills.

H. A. BLODGET, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I reside at Bakersfield and have resided in Kern County thirty-seven years or more. During the last twenty-three years I have been engaged in handling oil in the Sunset, McKittrick and Midway fields. I am a pioneer in those fields. I have been engaged quite extensively in the business during the last twenty years. The Company with which I was connected owned a large area of oil bearing lands in the Sunset fields and had some interests in the McKittrick in the early days and had large interests in the acreage on the West side since 1890 and some interests in the McKittrick as far back as 1878. In a general way I am thoroughly familiar with the history of the oil industry in Kern County for the last twenty years and I had some interests in McKittrick in 1870. We had some locations in the McKittrick in 1877 or '78. They were made under the mining laws of the

United States and were for the purpose of drilling for oil. I believe I had an interest in probably twenty locations at that time, all being a hundred and sixty acre claims but one. These locations commenced Northwest of McKittrick and extended three or four miles right down both sides of what is now McKittrick, right on down the strike Southeast. By strike I mean strike or outcrop, the strike or the break that was evidenced by oil seepage. These oil seepages were visible, very much in evidence and they extended for four or five miles along the strike or break Northwest and Southeast. That was the general strike of the oil bearing formation through that [**218**] country. It runs parallel in the valley. The oil developments commenced in the Sunset district about 1888 or 1889 and during the next ten years we had done considerable drilling covering a space of two or three miles. I think prior to 1890 I had practically visited all the asphalt deposits from Sunset to McKittrick. I think I had personally seen all of them. It was at that time when our activities begun on the West side. That was 1890 and then it was within a year or so that I was familiar with all the seepages. The largest seepage was right at McKittrick. Then the break was very marked all along there for a couple of miles or more and there was no brea deposits of any extent Southeast of McKittrick—and there was one quite prominent spring in what was called the head of the Elk valley which was perhaps two and a half or three miles Southeast of this large seepage that I spoke of that is now McKittrick. From there on I know of no seepages un-

til we struck the Sunset field and the first seepage was just South of the Eight Standard line. It was in Section 2, Township 11 North, Range 24 West. From there the seepages extended for three or four miles Southeast. I was familiar with what had taken place in the development of that country in a general way over the entire field. I was actively interested in oil operations in the vicinity South of McKittrick prior to that time and made asphalt in 1891, 92, 93 and 94. I was familiar in a general way with the development of that country for oil on July 1, 1904. There was a continuous chain of wells from a point, say two or three miles Southeast of old Sunset up into the Midway as far as Chanslor and Canfield's operations and then there was a gap of two miles and then operations commenced with what is known as the Belgian wells and extended for three or four miles Northwest from there through the McKittrick back into the Temblor Hills. There was practically a continuous proven field from the Southeast of Sunset to four or [**219**] five miles Northwest of McKittrick barring a slip that would be now from Fellows to McKittrick. That slip is now proven territory. At Sunset these developments were right at the beginning of the foothills. The Buena Vista Hills and the Elk Hills are a spur running out several miles from the main ridge of the country. In 1904 the development did not extend to the Buena Vista Hills but extended parallel to them and a little West of them. There was a long draw that separated the Elk Hills from the Buena Vista Hills and practically another draw or valley that separated the Buena

Vista Hills from the low hills that rose back from the back-bone of the ridge. There are two parallel valleys. There was some development East of McKittrick in July, 1904. This development was by the U. S. Oil Company and was two or three miles East of McKittrick. I think it was before 1904 but I am not positive. I would say that there were more than one hundred wells in July, 1904, in the district from Sunset on the South to McKittrick and Temblor on the North. I remember when the Southern Pacific Railroad was put into McKittrick. I had something to do with the proposition of putting it in there. The inducement that promoted the construction of the road was the prospect of a profitable traffic that was to come out of the production of asphalt and oil in that district. I think the road was put into McKittrick in 1893. At that time I was operating an asphaltum business in the vicinity of McKittrick. I interested the Southern Pacific Railroad Company people through Henry F. Williams, who was at that time residing in San Francisco but spent much time in Kern and who was selling town lots in Kern for the Pacific Improvement Company. I knew Mr. Williams to be on very close and cordial terms with the Railroad people and that is why I went to him. I took the matter up with the Railroad authorities, particularly Mr. A. N. Towne, the General Manager. I had a number of interviews with Mr. Towne and visited him several [**220**] times at San Francisco. I helped to organize the Standard Asphalt Company. I would say that the Standard Asphalt Company was one of the subsidiaries of the Southern Pacific Rail-

road Company as it was organized to acquire property that was to be conveyed in consideration of the building of that railroad. The first officers and directors of the Standard Asphalt Company, I think, were Mr. Towne, Mr. Dowtey, Mr. Williams, Mr. Jewett and myself, I think. One half of the stock was held by the directors of the Pacific Improvement Company. One half of the stock of the Standard Asphalt Company was owned by Mr. Jewett and myself and the other half by the Pacific Improvement Company representing the Southern Pacific Railroad Company. The railroad was put there in pursuance of these arrangements about the organization of the Standard Asphalt Company in the transferring of the stock and has been operated ever since. The right of way from Bakersfield to McKittrick was obtained by Mr. H. Williams and me. It was largely donated. There were a number of odd numbered sections which had been patented to the Southern Pacific Railroad Company crossed by this road from Bakersfield to McKittrick and I do not think any right was specifically obtained. The railroad owned the sections and there was no necessity for giving them what they already had. The interests of Jewett and Blodget were transferred to the Standard Asphalt Company in accordance with the agreement for the building of this railroad. At that time Jewett and Blodget had some leases of oil lands in the McKittrick field and some lands in fee in the Sunset field, all of which were conveyed to the Standard Asphalt Company pursuant to the arrangement. At that time we had extensive lease-hold interests at

McKittrick and also a great deal of land in Sunset. At that time we had shipped several hundred tons of Asphalt. Prior to that time it was a paying business. We had to transport a long distance by team from Sunset and McKittrick to Bakersfield and [**221**] it was very expensive but we had delivered a good deal of asphalt and we were satisfied that it would be a paying business and would justify the construction of a railroad which would furnish transportation. The future probabilities of that district or the country tributary to the Southern Pacific branch into McKittrick as an oil producing and oil shipping community figured largely in the inducements which lead to the putting of the road in there at that time. The portion of the road from Lokern to McKittrick was built to furnish transportation for the production of oil and asphalt from that McKittrick field. The probabilities of a great production of oil and shipment of oil in the future from that district was understood by the railroad officials as an inducement to get them to build a road through there as I had personally brought that matter to Mr. Towne's attention. I told Mr. Towne that the deposits of asphaltum in evidence in that district was a drop in the bucket only to the quantity of oil that was tanked underneath and that would be produced. In other words the visible evidence of tonnage was as nothing, practically, compared to what was underneath. Jewett and Blodget continued to hold their interests in the Standard Asphalt Company about three or four years. We then surrendered our stock in the Company and had conveyed to us the holdings

in the Sunset field, that is, the interests in the two fields were segregated. The Pacific Improvement Company acquired our stock. There was a considerable oil boom in Kern County in 1899 or 1900. The oil excitement was very general. I should say that excitement kept up three years or such a matter. It was shared in by the geologists and competent oil men and men of experience in oil formation. The excitement drew everybody into that district who was connected with the oil business or who expected to be connected with the oil business, and there was a great deal of activity in the McKittrick field. On account of the low price of oil it was not profitable to produce it under any circumstance and that was the reason of [**222**] the slacking up of the excitement. The lack of cars for transportation had also considerable to do with it as the two factors made the marketing of oil practically prohibitive. Oil could not be produced profitably and investors lost interest. That practically paralyzed that region and developments ceased. The Associated Oil Company had production in the McKittrick. I don't know what extent they had cars but they were transporting railroad oil and that took precedence over everything else. I know Mr. W. E. Youle. He was Superintendent for us for many years, principally at Sunset, also at McKittrick where he was in charge of the Standard Asphalt Company. He was a man of wide experience. We acted largely upon his advice. He made examinations of the country in general. We had Mr. Youle make an examination of the country in general and he reported on it and we instructed him to

assist and facilitate the making of our locations in the Elk Hills. He went out there as an experienced oil man or man familiar with oil, at our request. He had had a wide experience all over this state and in the East and it was particularly his experience on the coast that made his opinion valuable and we asked him to look at the Elk Hills country and give us his opinion as we had sufficient confidence in his ability and integrity to expend large sums of money on his advice as to the value of lands for oil. He reported that the Elk Hills showed indications of being oil bearing and that he believed we were justified in making the locations and endeavoring to acquire title. We made a hundred or two locations. I don't know the exact number. Associated with me in these locations were J. I. Wagy, Mr. Lamont, Mr. Jewett, Mr. Farnum, Mr. Packard. I think Mr. Youle's name was on some of these locations. I think the first of these locations were made on December 31, 1899. The locations covered a big stretch of country from the Elk Hills to the Buena Vista Hills. We kept up those locations for about six [**223**] years. We spent a good deal of money on these locations. At the time I became interested in these locations and during the time I continued to be interested in them I believed that the indications in the Elk Hills were good. The prospects were and that is all you ever "wild-cat" on—your belief or expectations. I have never had any reason to change my opinion. There has been some deep wells drilled in the Elk Hills. That was within the last two or three years. I don't know the exact location of them. There were some

successfully drilled by the Associated Oil Company at the North end of the same section of the country on some of the land we had originally located. I was interested in the purchase of some railroad lands in the West side in 1900 or 1901 possibly. We succeeded in purchasing five sections but were prevented from purchasing more by the withdrawal of the land from sale by the Railroad Company, who, acting under the advice and recommendation of their agent, Mr. J. B. Treadwell, had withdrawn any further land from sale in that field. I knew Mr. J .B. Treadwell quite well. He had told me that he represented the Railroad Company in the segregation of their oil lands and in the passing upon the probable oil bearing qualities of their lands. In 1902 we endeavored to sell the West side oil properties to the Southern Pacific Railroad Company. Mr. C. N. Beale and I went to New York on our way to London to see the representatives of some English and French capital about the purchase of the property. Mr. Beale was one of my associates and we stopped in New York and I went to see Mr. Harriman at the office of the Southern Pacific Company and he referred us to Mr. Kruttschnitt. We went fully into the matter with Mr. Kruttschnitt and showed him our maps and all the data which we had prepared. We discussed the matter generally with Mr. Harriman, the extent of the field, its desirability and so on. The interview lasted some time and then the matter was turned over to Mr. Kruttschnitt. We had three interviews with him. [**224**] I don't recall the specific details of the conversation with Mr. Harriman. We

were presenting our West side properties. They were very extensive and that involved a general discussion of the conditions on the West side, the character of the country and its value as an oil producing country. Everything relating to it to the best of my recollection was gone into. Mr. Harriman was a man who asked very incisive questions and it was presented by us with all the force that we possessed. I had not met him personally before that time. Then we were referred to Mr. Kruttschnitt, who went with us to our hotel where we had all the documents, maps and papers and we spent a couple of hours going through the thing very carefully in detail. I know Mr. W. S. Porter. I think he was President and General Manager of the Associated Oil Company. When I went to Mr. Harriman's office I met Mr. Porter, I think, in the outer office but not in the presence of Mr. Harriman. Mr. Porter did not take any part in the discussion I had with Mr, Harriman or Mr. Kruttschnitt. At that time he was connected with the Associated Oil Company. I have had over twenty years experience as an active operator in Kern County on the West side and during that time was familiar with the oil conditions and the oil business in that country. I know the plans that precede the formation of the Associated Oil Company as I was actively interested. In a general way, prior to the time I went East in 1902 to see Mr. Harriman and Mr. Kruttschnitt, I was familiar with the general operations and business of the Associated Oil Company and after my return I was familiar in the same general way with the conditions and operations of

the Associated Oil Company. When I returned there was a change in the general conduct and management of the affairs of the Associated. The Associated Oil Company at that time was delivering large quantities of crude oil to the Southern Pacific Railroad Company and the Southern Pacific Railroad—that is, the [225] Company's call for oil and facilities for transportation had precedence over that of all other purchasers and handlers of oil. Before I went East the Railroad Company was buying oil of all producers in all fields in Kern County. This change caused a lack of facilities for transportation, shortage of cars, and made it practically prohibitive for the shipment of oil out of the West side field and the river field for independent producers. The five sections that we purchased from the Southern Pacific Railroad before they withdrew the land under the advice of Mr. Treadwell, were sections 1, 11, 13 in Township 31 South, Range 22 East, and sections 7 and 19 in Township 31 South, Range 23 East. Deeds were procured from the Land Department of the Southern Pacific Railroad Company for four of these sections. The sections that we attempted to purchase at that time were Southeast of those that we purchased. I do not remember their number but they would be in Township 31 South, Range 23 East. We were not able to purchase or procure the title to these sections for the reason that I gave yesterday; they were withdrawn while our representative was in the office of the Southern Pacific Railroad Company. At the time that we became interested in those locations in

the Elk Hills it was the intention of my associates and myself to prospect that country and develop it for oil.

CROSS-EXAMINATION
OF
H. A. BLODGET.

By Mr. Lewers:

Q. Did you prospect and develop it for oil?

A. No. We did some road-building, and built a cabin and maintained—had a camp maintained there for some time, many months; but we never drilled.

Q. Did you ever make any discovery on any of your claims?

A. Nothing more than was developed by prospecting, that [**226**] is digging or excavating for roads and digging holes that would be developed for the matter of minerals like gypsum.

Q. Did you ever make any discovery of mineral in place anywhere on your locations, to your knowledge?

A. Well, not to my personal knowledge, because I didn't visit the hills at that time.

Q. You were quite generally interested in the oil business at that time, were you not?

A. I was.

Q. All over that country, practically?

A. No; not practically all over the country. I had interests, though, in McKittrick and in the Sunset field. It was principally in the Sunset field.

Q. And wherever you heard of discoveries of oil you became interested, did you not?

A. You mean financially interested, or took a personal interest in it?

Q. Personal interest, I mean.

A. I was interested to know what was going on; yes sir.

Q. And you visited a great many properties that you heard showed oil indication, did you not?

A. No; not a great many. I was familiar with the country from northwest of McKittrick clear down to Tejon Canyon, and in a general way, with the country from the valley over to the summit; but I never was up northwest.

Q. You have testified to quite a considerable oil development from Sunset up to McKittrick and beyond. That is in one general line, is it not?

A. In a general line; yes sir.

Q. It is down along the edge of the Temblor Range, is it not?

A. If you call it that; yes. It is the main ridge, range [227] of hills, through that country.

Q. It is quite close to the main ridge of hills?

A. Yes sir.

Q. Running northwest and southeast?

A. Along the flank of that range; yes sir.

Q. And from an early time you were familiar with many portions of that range, were you not?

A. I was familiar with portions of it; intimately familiar with some portions and only in a general way with the rest.

Q. Now, when was it that you employed W. E. Youle?

A. I think it was about 1891 or 1892.

Q. And where was he employed at that time by you?

A. He was employed by us in the Sunset field and at McKittrick.

Q. His duties carried him between those two places, did they not?

A. At times; yes sir.

Q. Did you at any time instruct him to investigate conditions in the surrounding country as to oil?

A. I did.

Q. That was one of his duties, was it not?

A. No, not generally; not as a—I take it that you mean that he had a sort of general commission to do that. That was not the case. We at certain times asked him to inspect certain localities. He did not have a general commission to be constantly on the look-out for land.

Q. Now, I understand that the firm of Jewett & Blodget placed a good deal of confidence in the opinion of Mr. Youle?

A. We had confidence in his judgment. He was a man of wide practical experience in the oil business. He did not claim to be a geologist, particularly.

Q. And when he reported favorably upon territory which you [**228**] had him examine, you acted upon his advice generally, did you not?

A. Well, I don't know that we acted upon it. We did in many instances, several instances. We valued his advice; accepted it.

Q. Did you not as a general rule follow his advice as to development?

A. Oh, I think so; yes. That covers a long range of a good many years and we were governed in our development by many things; but Mr. Youle's opinion we considered good, and his judgment good, and believed it better than our own in some of those particulars.

Q. And then you did very commonly follow Mr. Youle's advice in developing oil properties, did you?

A. Yes, and in locating.

Q. Development and locating?

A. Yes.

Q. Did you not, from time to time, locate oil properties which you did not develop?

A. Yes; we have located some that we haven't developed.

Q. Was that ever due to any advice upon that property given by Mr. Youle?

A. That we did not develop?

Q. Yes.

A. No; not that I recall.

Q. In no instance did you refrain from developing property by reason of anything that Mr. Youle had reported. Is that correct?

A. No. We had a long strip of territory that was on the strike, both sides, and we very early in our development work abandoned any idea of doing any development work to the west of the strike. [229]

Q. Was that due to any opinion advanced by Mr. Youle?

A. It probably was. It might have been. I don't recall particularly. I visited the field often and inspected the territory.

Q. Then in some instances, at least, you refrained from development work on the advice of Mr. Youle?

A. I don't know that we had any particular intention of development west of this break that I speak of in here. The locations of the wells were always discussed with Mr. Youle and his opinions considered, whatever they were, as advanced.

Q. Well, now, can you not give me a specific answer to this question: Did you ever refrain from developing any property by reason of advice given by Mr. Youle? That can be answered by yes or no.

A. Yes, if I could remember all the conversations, the times that I have asked his advice in that length of time. I would not want to reply to that question except generally. We generally followed his advice in regard to the location of wells, which would be the development work that you speak of.

Q. Did you ever follow your own inclinations without regard to Mr. Youle's advice in any instance where you refrained from developing property that you had located?

A. As I said a moment ago, I would feel unwilling to answer that question except in a general way. Mr. Youle was always consulted by me with regard to the location of wells and the plan of the development work, and I then had and still have a high regard for his judgment. I had no practical knowledge myself except what I had acquired in that field, and my recollection is that I followed his advice usually.

Q. Then it is a fact, Mr. Blodget, that you generally followed the advice of Mr. Youle, either as to the development or as to the non-development of any particular piece of [**230**] property? Is that correct?

A. Well, it wouldn't be conclusive, at all; no. I might have concluded to do things without—that is, in the acquisition of claims, without consulting him at all. Where his advice would be valued would be in regard to the location of wells, or the details; not necessarily as to policy.

Q. Well now, which is the fact? That you did generally follow his advise?

A. That is what I said.

Q. Or that you didn't?

A. I said that in the location of wells we followed his advice largely.

Q. Well now, did you follow his advice generally in refraining from developing property which you had located?

A. Well, as I say, our policy in the development of that property was the result of several factors, and—

Q. Can't you give me a specific answer?

A. "Yes" or "No"? Why, do you know that that territory is 25 miles, and covers all kinds of property—that is, all kinds of surface conditions and all sorts of conditions, and I saw Mr. Youle often through many years and I can't recall the details of those conferences or the reasons at that time for any particular policy or any particular specific action.

We were developing in the Sunset a strip of country about seven miles long.

Now, the question, Mr. Blodget, is this, if you will pay attention to it.

A. I will pay attention to it.

Q. Is it not the fact that you generally—I don't mean universally, but generally—followed the advice of Mr. Youle wherever you refrained from developing any property that you had under location?

[231]

Mr. Mills—I object to the question, because the record shows it has been answered by the witness at least four different times, that he followed it in a general way.

Q. By Mr. Lewers—I want specific answers to my questions.

A. Do you mean that we asked Mr. Youle whether or not we should refrain from developing any particular property?

Q. Will you read the question to the witness, Mr. Longley. (The question: "Is it not the fact that you generally—I don't mean universally, but generally—followed the advice of Mr. Youle wherever you refrained from developing any property that you had under location?" was read by the reporter.)

A. I will just answer that question this way, that where we did do any development we generally followed Mr. Youle's advice; followed it largely. When we refrained from developing property we might refrain from many reasons.

Q. Then you didn't generally refrain from devel-

oping property by reason of Mr. Youle's advice? Is that correct?

A. Read that question, please. (Question read by the reporter.) "Generally refrain"? No; I don't know that we asked Mr. Youle's advice when we concluded we would refrain from developing any territory. We consulted Mr. Youle generally and frequently in regard to the carrying on of the work, the location of wells, and everything connected with the development work. The policy of our development was something entirely apart from Mr. Youle's province.

Q. That was something entirely apart from Mr. Youle's province?

A. Our policy as to whether we would develop or not develop; yes.

Q. When did you first go into the Elk Hills?

A. Into the Elk Hills, probably in I think the spring [**232**] of 1908.

Q. That was the first time you were ever in there?

A. The first time I was ever in the Elk Hills; yes sir.

Q. And you don't remember, of your own knowledge, anything about what was known in the Elk Hills or what was in the Elk Hills prior to that time, do you? Of your own knowledge?

A. What was in it?

Q. Yes.

A. I hadn't been in them; no. I had been around them, all around them, completely around them.

Q. These locations you have spoken of as being

over there, in which your name appeared, were locations that were not made by yourself personally?

A. They were not.

Q. You had nothing to do with the determination of where those locations were to be, did you?

A. I did; yes sir.

Q. What did you have to do?

A. I agreed with my associates exactly where they would be; made the selection from the map as to the country we wanted to locate.

Q. You made the selection from the map?

A. Yes sir.

Q. Not from the ground?

A. No sir.

Q. You know of no discovery of oil on any one of those sections during the time you held them, do you?

A. No.

Q. And did you ever get any returns in the way of profit from any of those locations on that ground while you held them?

A. You mean in excess of cost?

Q. Yes. [233]

A. Or any returns? We sold one of our locations, that is, the location on one section.

Q. I don't mean sales of the locations. I mean profit.

A. Profit from the operation of the property?

Q. Yes.

A. No.

Q. Not one cent?

A. No.

Q. And you held part of them for a period of about six years, did you?

A. I did.

Q. Now, at that time you were in touch with a great many men who had capital, were you not?

A. Yes sir. More or less, yes.

Q. That is, from the time you first went into that territory you were in a position to interest men who had money, were you not?

A. Well, anybody was in a position to interest men with money if he has anything that is interesting to offer. I didn't hold the edge over anybody else in that particular that I know of.

Q. Were you not associated in business with many men who had ample capital?

A. Yes; I had an ordinary acquaintance with men who had capital.

Q. Were you not associated in a business way with them?

A. Not with any who were in the oil business.

Q. That is not the question. Were you not associated in a business way with many men who had ample capital?

A. No, not many.

Q. You were with some, were you not?

A. Well, I was associated in a business way with some wealthy men; yes. [**234**]

Q. You spoke of making a trip to New York with Mr. W. H. Beale, was it not?

A. Not W. H.; Mr. C. N.

Q. Now, Mr. C. N. Beale was the personal representative of whom?

A. The personal representative of himself.

Q. And no one else?

A. No sir; not that I know of.

Q. Did he at that time—

A. Oh, he at that time was connected with some—with the Kern County Land Company people in Bakersfield.

Q. Was he acquainted in any way with Mr. Tevis?

A. He was connected with W. S. Tevis; yes sir.

Q. Mr. W. S. Tevis was a man who had ample capital, was he not?

A. He was a man of large capital.

Q. At that time, I understood you to say on your direct examination, you were connected with a bank in Bakersfield?

A. At that time I was a director of a bank.

Q. Which bank was that?

A. Kern Valley Bank.

Q. And Mr. Tevis was also connected with that bank, was he not?

A. He was not.

Q. Never has been?

A. Never.

Q. Is that bank running now?

A. No sir.

Q. When did it close?

A. Some time in 1911; May, I think.

Q. Was Mr. Beale in any way connected with that bank?

A. Never. [235]

Q. He was not at the time of its closing?

A. No sir; had no connection whatever.

Q. Well, now, did you, through your connection with that bank, become associated in a business way with any other men who had capital and plenty of it?

A. No sir; not that I know of.

Q. Not that you know of?

A. No.

Q. And were there any other men of capital interested with you anywhere in the oil deals?

A. Nobody interested with me except Mr. Jewett that I spoke of and my associates in these locations, in the purchase of these sections that I spoke of.

Q. Now, did any of your associates in the purchase of these sections have means of their own?

A. Not large; no.

Q. And you say that you endeavored to purchase certain land in 1901 or 1900? Is that correct?

A. Buying railroad lands, yes, in 1900 or 1901. About that time. I didn't look up the dates.

Q. And you did purchase Sections 1, 11 and 13 in Township 31-22?

A. Yes sir.

Q. From whom did you make that purchase?

A. The Southern Pacific Railroad Company.

Q. From what representative of that Railroad Company?

A. The Land Department, Jerome Madden.

Q. From Jerome Madden?

A. I think so.

Q. You didn't make that purchase from Mr. Treadwell?

A. No sir.

Q. Or from Mr. Owen? [**236**]

A. No sir.

Q. But you made that from Jerome Madden?

A. I didn't make it personally. Mr. Packard, who transacted the business, made the purchase; but it was for himself, myself and our associates. There were four interested.

Q. And you say that you attempted to purchase other land but didn't succeed?

A. That is right. Yes sir.

Q. That was land that had already been patented to the railroad company, was it not?

A. Yes sir.

Q. Did you ever attempt to make a purchase of any lands in the Elk Hills?

A. No sir.

Q. Now, I understand you to say that in 1900 or 1901 there was quite a considerable oil excitement?

A. Yes; 1900 and 1901.

Q. How long did it continue?

A. It continued, I think into the spring of 1902.

Q. No longer?

A. Well, no longer, I think, than the summer of 1902, at that time.

Q. You have heard the testimony of other witnesses here that it continued for two or three years?

A. I know it. I think I heard one witness testify to that. That was correct.

Q. It did continue two or three years?

A. It commenced in 1899 and continued until 1901. That would be two or three years. 1902.

Q. It commenced in 1899, then?

A. Yes sir.

Q. And during that time a great many men came into that [237] country?

A. Yes sir.

Q. Including many competent oil men?

A. I presume they considered themselves such.

Q. Well, how did you consider them?

A. Well, they were men who had—wherever they were men who had practical experience in the oil business I considered them competent men.

Q. Did you not testify in direct examination that many competent oil men came in during that excitement?

A. I might have done so. There were a good many competent oil men—as competent as men in those days.

Q. There were a great many men came in who knew nothing whatever about oil, were there not?

A. Yes sir.

Q. And locations were made on a great deal of territory that you regarded as of no value? Is not that correct?

A. Well, I don't know anything about the scope of the locations and I don't know that I ever stopped to consider where they were locations made on land that I thought at that time were lands of no value.

Q. Do you mean to say that you were in there,

interested in the oil business, during that excitement, and didn't take into consideration where these locations were made by different individuals?

A. Oh, they were made by hundreds every day. The records were just overwhelmed with them. And I might have noticed them in a general way, but I didn't take the trouble to figure out these particular locations. As I said a moment ago, there were many locations made, as I remember them now, on lands that I didn't think were oil-bearing.

Q. Well now, wasn't it a matter of considerable comment [**238**] that these men who knew nothing about oil came in and located the whole country?

A. Well, they located the country pretty generally from Tejon Canyon to the north line of the country, from Tejon Canyon to Devil's Den—plastered with locations.

Q. Good, bad and indifferent land was located? Was not that a fact?

A. It depended, I suppose, on the fancy of the locator.

Q. And not upon his expert knowledge?

A. He might have thought he had expert knowledge. I don't know. I didn't talk with those men or have any idea what their—that is, you speak about all the locators. I had no acquaintance with them and no conversation with them, and no idea what their ideas were.

Q. And was it not the fact that in many places there were two, three, four and five locations one on top of the other?

A. I don't know. The records would show that.

Q. Well, don't you know that to be the fact?

A. You say "one, two, three, four, five." No; I don't know that I do. There were many instances where locations lapped. I think some of my knowledge; but I don't know how many. That is a matter that the records would disclose.

Q. And were there not numerous locations upon which no development at all was done?

A. There were locations on much land on which no development work was done; yes sir. That was the custom at that time.

Q. And you yourself were interested in certain locations upon which you did no development work at all?

A. No. Up until the decision of the court that the assessment work was valueless and did not in any way tend to preserve title to the claim, we always did our assessment work [**239**] on the claims I was interested in.

Q. You say "the decision of the court that assessment work was valueless."

A. In effect.

Q. Wasn't the decision to which you refer one that you must have a discovery before you can have a valid claim?

A. No; I don't know that that was exactly the case. We made some locations at a very early day, and at that time they were made under the placer mining laws and the custom and the general understanding was that if you did your annual assessment work of $100 you would hold the claim.

Q. Even though you had no discovery?

A. Well, that was a point that was adjudicated later. The general custom was, the belief was—well, the general custom through the country—that if you did your assessment work you hold the claim. Until that was adjudicated, that was the belief.

Q. Now, referring to those claims you were interested in over in the Elk Hills, did you do your assessment work?

A. Not on all the claims. We did some considerble assessment work.

Q. And you relocated, didn't you?

A. We did.

Q. Several times?

A. Yes sir.

Q. That relocation was made in each instance because the assessment work hadn't been done, wasn't it?

A. Well, not necessarily. It was done because the location was supposed to be color of title, or prima facie title—possession—and it was with a view of retaining the claims until such time as conditions would justify developing them.

Q. Well, wasn't it regarded by you as necessary to relocate because you had not done your assessment work? [240]

A. Well, that might have been a reason for it.

Q. That was the reason, wasn't it?

A. That was one reason; yes.

Q. Wasn't that the chief and only reason?

A. Well, if we didn't do the assessment work we

were compelled to relocate on our claim or our claim was not valid under the mining laws.

Q. That is the reason you relocated?

A. Yes sir.

Q. And at the time when you relocated, in each instance, you had as yet made no discovery of oil?

A. No.

Q. And never did make one?

A. No.

Q. And at the time when you first located, and on those subsequent times, you didn't know that there was any oil there, did you?

A. No.

Q. And never did know.

A. No.

Q. And don't know it now?

A. Yes; we know, wherever there has been development that has found oil—we know now.

Q. I am referring to the Elk Hills.

A. No. You are referring, I presume—that is, I am referring to the land that was covered by our locations.

Q. In the Elk Hills?

A. In the Elk Hills. At that time it covered the Elk Hills, as I testified yesterday, and the Buena Vista Hills and down into the valley, the flat, on the east side. It covered a wide area.

Q. Now, is it not a fact that you and your associates [**241**] made many locations during that oil excitement without the intention at all of developing them but for the purpose of speculating and selling the land?

A. No. As far as we were concerned, we made no locations on the West side that we didn't retain and do assessment work.

Q. I am referring to those.

A. Well, then, I have answered the question. The question was, did we not make locations without any intention of developing. That was not so. We did intend to develop all we located.

Q. You did intend to develop those that you located in the Elk Hills?

A. That was the general intention. As far as I was concerned, it was my intention to develop them. We could not dispose of them otherwise.

Q. Why didn't you develop them?

A. The conditions of the oil business were such that it would have been ridiculous to have spent any money during that entire period.

Q. During what period?

A. The period extending from 1902 to 1905 or 1906.

Q. Then, did you, during that period, between 1902 and 1905 and '06, totally abandon all development on all of your property?

A. No; we retained possession, as I tell you. We kept a man there awhile—I don't remember just how long—and maintained our locations, renewed our locations, held color of title.

Q. That is not the question. Did you cease, absolutely, all development on all of your properties everywhere during that period?

A. Doing development work? Practically, yes.

Wait a [242] moment. We operated our producing wells in the Sunset field, and we did some development work in 1903 and 1904—1903—and then we didn't commence again until 1907.

Q. Then, during 1902 and '03, you did actual development work on some of your properties?

A. Yes.

Q. Why didn't you on the properties in the Elk Hills during that same period?

A. Well, because in the Jewett & Blodget interests we only had a small interest, proportionately, and we were developing our own property, where we had facilities for handling the oil to a limited extent.

Q. Was that your sole reason for not developing that property in the Elk Hills?

A. That was—The reasons for not developing the property in the Elk Hills was that there was no market for oil. The price was so low that if you had had a thousand barrels a day in the Elk Hills you could not have transported it, it wouldn't be worth a cent. And, as far as I am personally concerned, the only development work that we could afford to do was on our own property that we owned exclusively.

Q. Then the reasons you have given are the sole reasons for not developing that property in the Elk Hills?

A. I consider those were reasons enough—that the oil had no value.

Q. Did you have any oil there?

A. In the Elk Hills?

Q. To your knowledge?

A. You asked about the development of oil. I answer that we got no oil in the Elk Hills.

Q. Well, was not the fact that you had found no oil in the Elk Hills, and that you didn't know whether you ever would find [**243**] any, the reason why you didn't develop those properties?

A. You don't suppose we expected to find it running out of the ground, do you? It costs money to find oil in any oil territory.

Q. Will you kindly answer my question.

Mr. Mills—I submit he has made a sufficient answer.

Mr. Lewers—Please read the question, Mr. Longley.

(Last question read by the reporter.)

A. No.

Q. That had nothing to do with it? Is that correct?

A. Well, I don't know how I can answer it more fully than I have. To find oil in the Elk Hills or in any other oil territory requires an expenditure of money and the perfection of an organization and a large amount of equipment, and all that, and the market conditions and the physical conditions at that time were such that there was no justification for doing anything of the kind. We didn't make any attempt to find oil in Elk Hills by drilling—the only way it could be found. The reason we didn't do that was because oil had no value. If we had had a thousand barrels a day, as I stated, in the Elk Hills, it wouldn't have been worth a nickel.

Q. And yet, Mr. Blodget, you continued to develop properties elsewhere where oil was not worth one cent more than it would have been in the Elk Hills?

A. Well, the only development we did was right along side the railroad track, that would give it a little more value—not much—than if it was in the Elk Hills, under the conditions that existed—that is, a little more value under the conditions that existed at the time you mention, 1902 and '03—than if it was in the Elk Hills, but it did have a little percentage.

Q. Did the fact that your land in the Elk Hills was further west from the main ridge have any bearing whatever on [**244**] your refraining from developing?

A. No. The fact was that it was east, and in exactly the right direction.

Q. I mean east. And in exactly the right direction?

A. Yes.

Q. Then you regarded it as more valuable than the land near McKittrick because it was further east, did you?

A. I regarded it more valuable than any land lying west of the strike or the outcrop.

Q. That is not the question. You have testified that you had an interest in numerous wells lying to the east of the main range and close to it, right along it?

A. Well.

Q. Did you, in 1900, and up to 1905, not regard

the territory lying right along the foot of the main range as more valuable for oil than territory farther east?

A. I would have considered the prospects for getting oil there better; yes sir.

Q. Very much better, would you not think?

A. Closer to the outcrop; yes sir.

Q. And was not that one reason why you continued your development, during the depression, close to the outcrop, and refrained from doing so to the east thereof in the Elk Hills?

A. No sir.

Q. That had nothing to do with it?

A. Not at that time; no sir.

Q. Then you at that time had no reason in your own mind to prefer the territory for development purposes near the main ridge over that in the Elk Hills?

A. No reason?

Q. Yes.

A. Yes; several reasons. [**245**]

Q. What was it?

A. The reasons for preferring the territory lying nearer the ridge was that it was more—we would consider it more certain, and all the development was done by the concern with which I was connected was done right beside the railroad, with transportation facilities.

Q. Then you regarded that near the ridge as more certain than that lying over in the Elk Hills?

Mr. Mills—I object to that question. The record shows that the witness just answered the question.

A. Yes. Near the outcrop, we would call it, near the strike, the strike of the outcrop I would consider more certain.

Q. By Mr. Lewers—And then, to some extent at least, you regarded the discovery of oil in the Elk Hills as uncertain?

A. I would not consider the discovery of oil at any particular point certain in an untried field.

Q. Did you not consider the discovery of oil in the Elk Hills at that time as far more problematical than that near the ridge?

A. That would depend upon how close to the ridge. I would consider it more problematical to find oil at a distance from a known development than closer, sure.

Q. And did not that distance and the greater uncertainty as to the discovery of any oil at all in the Elk Hills have some influence on your refraining from doing development work?

A. At that time?

Q. Yes.

A. No sir. [**246**]

Q. None whatever?

A. No sir.

Q. Did you not ordinarily, in determining whether you should carry on development work, on any of your properties, take into consideration, as a very important factor, the probabilities of discovering oil?

A. I did.

Q. And did you not, as a rule, direct your devel-

opment work toward those points where you regarded the discovery of oil as more certain than at other points?

A. We did; yes sir. The obtaining of oil. This was not a discovery. The development of a known field is very different from operating or prospecting in an unknown field. I would answer your question, Yes.

Q. You then regarded the Elk Hills as a totally unknown field?

A. It was unknown; yes sir.

Q. Now, in what territory did this depression in the price of oil exist?

A. On the Pacific Coast.

Q. Was it due, in all of these territories, to the Associated Oil Company having cars furnished it by the Southern Pacific Company?

A. No. I would think not.

Q. It was a natural economic condition at that time, was it not?

A. It was brought about by the alleged over-production of oil and the lack of transportation facilities.

Q. Is it not a fact, Mr. Blodget, that, beginning along in 1899 and extending up two or three years after that, there was a vast and sudden increase in the production of oil in California?

A. There was; a very large increase. **[247]**

Q. And the production, for the time-being, outstripped the means of making use of it, did it not?

A. Yes. There was a supposed, or alleged, as I say, surplus of oil, excess of production.

Q. That is, conditions had not had time to adjust themselves to the increased production? Is not that the fact?

A. The market had not responded in proportion to the development of oil.

Q. And you would not attribute that entirely, then to the shortage of cars?

A. Attribute what?

Q. The depression in the price of oil.

A. No; I would not attribute it entirely to the shortage of cars. No.

Q. The shortage of cars was simply one symptom of a very general condition of lack of ability to handle the increased production, wasn't it?

A. I think it was a symptom of a desire not to furnish the facilities. I don't know that it was inability to furnish the facilities.

Q. Mr. Lewers—I move that the answer be stricken out, as not responsive. Read the question again, Mr. Longley. (Last question read by the reporter.)

The Witness—Read the answer, please. (Last answer read by the reporter.) I can't modify that answer, from my knowledge of the conditions.

Q. By Mr. Lewers—Mr. Blodget, if you will pay attention to the question—

A. I have,

Q. —I think you can answer it. Was not the shortage of cars, whatever it may have been, due to

one symptom of a very general condition of inability to handle the increased pro- [248] duction of oil?

A. "Handle" by whom?

Q. Everybody.

A. You mean the producer or the carrier?

Q. The ultimate disposition and consumption.

A. It was a symptom of the inability of the producer, yes; of the carrier, no.

Q. The carrier, at that time, even though the production of oil increased, as you have stated, very suddenly and greatly, had merely to issue the order and tank-cars would be forthcoming in any conceivable quantity? Is that correct?

A. Is that your statement, or is it a question?

Q. That is a question.

A. I don't know what the ability of the railroad companies was to purchase tank-cars here. They were purchasing tank-cars at that time. Whether they purchased all they could or not would be another matter.

Q. Isn't it a fact that beginning at that time the purchase of tank-cars, not only on the Southern Pacific but the Santa Fe, increased quite rapidly?

A. Yes; quite rapidly.

Q. And isn't it also a fact that many independent producers of oil themselves purchased tank-cars?

A. I don't know of but one.

Q. The Associated?

A. Well, the Associated just painted the letters "S. P." out and put "A. O. Company" on. Our friend Captain Bunting purchased some cars.

Q. You have no feeling in this matter?

A. Not at all.

Q. Not a bit?

A. I am just stating facts. That is all. **[249]**

Q. You know that the Associated merely went out and wherever they found a car marked "S. P." they painted out the "S. P." and put the "Associated" on?

A. No. That was done in the S. P. Yards at Kern City.

Q. You know that of your own knowledge?

A. I do.

Q. And wherever they found a car in the S. P. yards of Kern City they painted out the "S. P." and put the "Associated" on?

A. No; the S. P. did it. The Associated probably didn't do it.

Q. You swore just a moment ago that the Associated did that, didn't you?

A. Well, I said "they," and when I used the word "they," I thought that would be—We were speaking about the ability of the railroad company to produce cars. Of course I have got quite an intimate knowledge of the conditions that existed at that time in Kern county.

Q. In other words, you made a statement unguardedly that you didn't know to be true?

A. No; I said "they." It was done by the Southern Pacific. The Southern Pacific painted off the "S. P." letters and put "A. O." on them. I didn't

see the painter that did it. I suppose he did it at the "S. P." instructions; but that was done.

Q. And you don't know, of your own knowledge, whether or not those cars were purchased by the Associated Company or not, do you?

A. I do not. No.

Q. And you don't know, of your own knowledge, whether or not those cars were originally bought by the Associated Company, do you?

A. I know that the authorities at Bakersfield stated that **[250]** they had a large number of cars coming, which, when they arrived, would be available for the use of independent producers, of which we were one, and that when they did come they were put into the Associated service. I know that.

Q. Will you kindly answer my question?

A. I will try to. What was it? (Last question read by the reporter) No; I don't know that.

Q. So, what you are stating is based upon hearsay?

A. Statements made to me by the officials of the company. I could not get it any other way.

Q. And whether or not those officials had any definite knowledge of the actual ownership or title, you don't know, do you?

A. I don't know to what extent they had knowledge; no sir.

Q. And yet you are willing, under oath, to state as a fact matters that you heard, without knowing whether they are true or not.

A. Mr. Mills—The government objects to that

question, because the witness has stated that he got his information from the officials of the railroad company.

Q. Mr. Lewers—The latter part of which objection will of course be available to the witness?

A. The statement that I made is a statement of the information that I got from the officials of the road, in regard to the cars. And as to the fact of the transfer of the cars, that I knew personally—that is, the changing of the lettering.

Q. And, based upon that information, you made your statement a few moments ago that the Associated went in and painted out "S. P." on the cars.

A. I didn't say so. I used the word "they." We had been talking about the transportation companies. The Associated, so far as I know, didn't paint any of the cars. I presume the S. P. [251] Railroad Company painted them.

Q. And you say that the Southern Pacific was using oil for fuel on its engines during that period?

A. Well, I didn't run an engine. I say, Yes. That would probably be general repute and hearsay; but it was using oil on its engines.

Q. You observed the engines shipped for the use of oil, did you not?

A. Tanks; yes. I have never been in a locomotive. I don't know how they are fitted.

Q. And it was commonly understood, was it not, and known by you, that the Southern Pacific Company was developing oil properties for the purpose of getting fuel for its own use?

A. Well, at that time I didn't know. I think that was before it did any active—I don't know what time it commenced active development, the K. T. & O. The Associated was actively developing for oil which, by common repute and the statement of the railroad people, was being used by the railroad engines.

Q. For fuel?

A. Yes sir.

Q. Now, you say that the depression in the price of oil existed all over the California oil fields?

A. It was general; yes sir.

Q. Now, was there any depression in the price of oil at points of consumption, during that period?

A. Yes, I think so; a very considerable depression.

Q. A very considerable depression?

A. I think so.

Q. Did the Associated Oil Company get any better prices for its oil than anybody else?

A. Not to my knowledge. I don't know what prices they got. [252]

Q. And you never heard they got any better prices, did you?

A. I never asked anything about it. Let me see. I don't know that they got any better prices than anybody else. They were able to deliver as nobody else was able to deliver oil.

Q. Nobody else was able to deliver any oil?

A. Practically not, by cars; no—that is, to deliver with any certainty. That is, the uncertainty

as to cars was such as to preclude any assurance, any certainty, of being able to deliver.

Q. And did the Associated have an absolute certainty of getting sufficient cars to deliver its oil?

A. I don't know to what extent it could get cars. Of course they had an absolute certainty of getting all the cars it wanted to deliver railroad oil.

Q. That is, the railroad was getting its oil for fuel?

A. Yes. That is, it had a certainty of getting cars to deliver railroad oil.

Q. By "railroad oil," you mean fuel oil for the railroad?

A. Oil for the railroad, yes; for use.

Q. Now, you don't mean to say that the railroad absolutely prevented any shipper, except the Associated Oil Company, from shipping oil by cars, do you?

A. Oh, no. No; they simply asserted they didn't have the cars. They didn't present them.

Q. What do you mean by "present?"

A. They simply didn't furnish the cars—stated they could not.

Q. And the railroad, during that period—not only the Southern Pacific, but also the Santa Fe line—began to increase the number of tank-cars for oil, did they not.

A. They did.

Q. And that increase continued, did it not? **[253]**

A. I don't know how long.

Q. Wasn't the number of tank-cars in use upon

the railroad lines in California vastly increased during the period between 1900 and 1905?

A. It was largely increased. I have no means of knowing how largely. Very largely increased, to my knowledge.

Q. And did not that increase permit the independent oil shippers to get their oil to market?

A. No.

Q. It didn't?

A. It permitted it to an increaseed extent, perhaps, but not to a sufficient extent.

Q. Then, have they ever been able to get their oil to market to a sufficient extent?

A. Well, I got tired of trying, after 1906 and '7—after 1907. I don't know what the condition has been since then.

Q. Then, since you quit you don't know what the conditions are?

A. I don't know what the condition would be at the present time, as to cars. Of course a large proportion of the oil is transported by pipe-line out of the fields. I don't know to what extent shippers rely upon cars. As I said, I got tired; I could not get them.

Q. There were no pipe-lines in 1901 and '02, were there?

A. No; I think not. The first pipe-line was out of the river field. I don't remember when that was built, exactly.

Q. Was there anything to prevent the construction of pipe-lines at that time?

A. No; I think not. Not that I know of.

Q. Now, on this occasion when you went back to New York with Mr. Beale, you say you met Mr. Harriman in his office in New York? **[254]**

A. Yes sir.

Q. And you saw Mr. Porter, who was connected with the Associated Oil Company, sitting in Mr. Harriman's outer office?

A. I think so. It was in the office. It was right in the adjoining office, I think.

Q. I suppose that fact seemed to you full of importance, didn't it?

A. Not at that time. It did later, though.

Q. And if you had happened to see some other individual sitting in the outer office of Mr. Harriman, you would have at once concluded, would you, that there was a conspiracy between that individual and Mr. Harriman to depress the price of oil in California?

A. No. No; I just knew Mr. Porter. His visit there had no meaning to me at that time.

Q. You, also, appeared in Mr. Harriman's outer office the same day, didn't you?

A. Yes.

Q. And you say you tried to sell all of your West End properties to Mr. Harriman?

A. Yes sir.

Q. You didn't succeed?

A. No sir.

Q. And, although Mr. Kruttschnitt went into the matter very fully with you and you explained the

situation as enthusiastically as you felt the facts warranted, nevertheless they would not purchase?

A. I didn't say "enthusiastically." I mentioned it; I made a full explanation to Mr. Kruttschnitt, answered all his questions, and made the fullest showing that we could.

Q. And yet they didn't buy?

A. They didn't. **[255]**

Q. Now, I understand you to testify that the Associated people delivered large amounts of oil to the Southern Pacific Railway Company. Is that the fact?

A. Well, you would probably say that was hearsay. I was so told by the railroad officials at Bakersfield.

Q. Did any railroad official ever tell you that they delivered a single tank-car of oil to the Southern Pacific Railroad Company?

A. Why, yes. The train dispatcher used to tell me daily the number of cars that had to go for the company.

Q. Which company?

A. Southern Pacific Railroad Company.

Q. You are sure it was not the Southern Pacific Company?

A. Well, I understood the "Railroad." He said "Company oil, railroad oil."

Q. That is what he said?

A. Yes.

Q. Then he didn't say "Southern Pacific Railroad Company" oil?

A. No; I don't know that he did. Of course there was no occasion for him to say. It was Southern Pacific Railroad—it was oil for use on the railroad.

Q. Then why did you testify that it was delivered to the Southern Pacific Railroad Company, so carefully?

A. Well, it was delivered to the railroad company, and it was the Southern Pacific, Southern Pacific's railroad.

Q. That is the way in which you reached your conclusion, from that method of reasoning, is it?

A. Why, yes. I had no other.

Q. It was delivered to the company which was operating the road, wasn't it, so far as you know?

A. So far as I know; yes sir. **[256]**

Q. And you don't know what company was operating the road, do you?

A. Well, I have a vague idea the Southern Pacific Railroad Company; but I don't know that the Southern Pacific Railroad Company has any railroad. If they haven't any, I don't know. That is, the Southern Pacific Railroad was very much in evidence. I supposed it was the Southern Pacific Railroad Company.

Q. That is, your idea is a vague one, as you said?

A. No. The Railroad Company, I said, was very much in evidence, and there never was any misapprehension or misunderstanding when the Southern Pacific Railroad Company matters were discussed between people, that I know of.

Q. No misapprehension at all?

A. Not that I know of. I never had any doubt, and I was discussing with the Southern Pacific Railroad Company's employees and officials matters that affected the road, and I didn't have any doubt about it; never thought there was any question raised.

Q. Where were you living in 1904?

A. Bakersfield.

Q. And what papers did you subscribe for?

A. I subscribed for the local papers.

Q. Which ones?

A. I think both of them.

Q. Did you take the Echo?

A. I took it; yes sir.

Q. And you were a subscriber, were you?

A. Yes sir.

Q. And in 1904 you still retained your interests in the locations in the Elk Hills, didn't you?

A. We had them; yes sir.

Q. And you were interested in the oil situation generally, [257] in that you read items concerning it, I suppose?

A. I looked through the paper generally, yes; but in a very casual way. I looked through the papers more or less all the time. I might not see every one, or all that was in it. I don't read the advertisements, usually.

Q. You were at that time more or less familiar with the townships and sections throughout the country surrounding McKittrick, were you not?

A. Oh, yes, in a general way. Of course if I was interested in any particular description I could eas-

ily look at a map. A newspaper description is not very accurate, as a general thing. Very rarely they are right.

Q. That is, a description in a newspaper item, you mean?

A. Yes; in the items that are given of development work, for instance, and that sort of thing, they are generally inaccurate.

Q. But if you saw an item that referred to the township and section, or quarter-section, in a country that you were familiar with, you would be able to place it, from your knowledge of the topography of the country, wouldn't you?

A. In a general way, yes sir. When I heard a township and range mentioned, I would know instantly what the country was. My knowledge of the country was sufficient to enable me to remember them.

Q. You never filed any protest against the application of the Southern Pacific Railroad Company for this land in 30-23, did you?

A. No sir.

Q. Although you were a subscriber to the Bakersfield Echo during 1904?

A. I was a subscriber, I presume. I don't know. I have taken the paper steadily right along. [258]

Q. Did you try to sell Mr. Harriman any land in the Elk Hills?

A. No sir.

Q. The land that you offered at that time didn't include your interest in the Elk Hills?

A. No sir.

Q. He might have purchased, if you had offered him that, might he not?

A. I don't know, I am sure. It didn't occur to me.

Q. You offered everything else you had in the West End, though, didn't you?

A. No, not entirely; no.

Q. What portion did you omit?

A. There were some small interests in the McKittrick field.

Q. But everything else you offered?

A. We offered the Sunset, yes. In the McKittrick field, we had some interests there.

Mr. Lewers—That is all. **[259]**

JAMES F. MC CAY, witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am 53 years of age, and reside two miles North of Fellows, upon the Pioneer Midway. I am a driller, and have followed that occupation and never done anything else since I was a boy, but the oil business. I have drilled since I was old enough to start drilling. I am now employed as a driller by the Associated Oil Company. I have been in their employ pretty nearly seven years; that is, the Amalgamated and different companies—all associated, I suppose; been under one management. I have been drilling, continuously, oil wells for 25 or 30 years. It is a part of my present occupation to go to and remedy any troubles with the wells belonging to the

Associated Oil Co., wherever they send me; that is to a certain extent expert work.

I know the Associated Oil Co. is operating in what is known as the "Elk Hills" East of McKittrick at the present time, and that that company has brought in wells which are producers in that country. I should judge the first well that produced was brought in about 9 or 10 months ago; something like that; nearly a year. I am not thoroughly conversant with the sections, from what they tell me that well was on Sec. 26, T. 30, R. 23. I saw that well; it was drilled with a rotary drill. I did not see the well at the time it was brought in. They had done some more work afterwards on it before I saw it last. They did some work after I had seen it, but it was flowing some oil at the time I saw it. I could not say how long it was before I saw it that it started because at the first time I saw it I went there to do some work on it, and at intervals of every 20 or 30 minutes or half an hour, it would flow some oil. It might have been four or five months; something like that; three or four months; I don't just recollect the time which had intervened between the time I saw it and the time I afterwards found it producing. I was not there when it was **[260]** put on the pump. Shortly afterwards I just passed it, but did not pay much attention to it. I could not say what the production of the well was per day at the time I was there, for I never took measurements of this well on 26. I did take measurements of a well belonging to the Associated Oil Co., in the Elk Hills on

Sec. 30. I think it was in T. 30, R. 24. It was east of the well I have first referred to. I was there when the pump was first put on that well, and measured the oil flowing from it when I was there. We had been working with it. I had charge of the well, at the time, perforating it and getting it to produce and I had probably been over there maybe four or five weeks working with it, bailing it, before we put in the pump. We put in the pump and it had been pumping, I think, a couple of days when I took a gauge of it. Pretty near 800 feet of the casing was perforated I believe, at depths of somewhere in the neighborhood of 3600 or 3700 feet up to 2700 feet. The perforations were put in to catch the oil. That well increased its rate of production from the time it was first put on the pump up until the time I gauged it. That is as far as my knowledge of its increased production went. After I gauged it that time I have not been there since and have not seen the well since. When I put it on the gauge it was producing at the rate of 406 barrels a day as a maximum up to that time. Of course, I could not say that it had gradually increased or what amount it had increased per day. When we first got it to showing oil, it would flow every once in a while, and going into the sump hole, we would not take much gauge of it. I do not think, at the start off, it would do much more than 50 barrels a day. That is about what we estimated it for a while until we got it on the pump. Of course, we could not get the oil out of it with a bailer as fast as we could with the pump. After we put it on the

pump it gradually increased in volume; for two or three days it kept getting better. Its increase in volume [261] can be explained by the fact that by putting it on the pump the pressure was released from the inside and took more fluid out of the inside of the casing and gave the oil a chance to come in through the perforations.

That well was drilled by a rotary drill, with which you force liquid mud or wet clay down in the casing and up around the sides. In drilling with a rotary drill, it is pumped into the side of the drill pipe and forced up around the walls on the outside. The purpose of that is to plaster the wall to keep the wall from caving. That pressure in the pipe is sufficient to force the mud up around the outside of the casing. Of course, in forcing that mud with the rotary up around the outside of the drill pipe, there is not any casing, as a general thing, but just as the bare walls of the well. As the bit cuts it away, it leaves the bare walls and the mud is forced around to wall that up, the same as plaster. We call it "plastering it up." When a well is first put on the pump, the perforations having previously been made, some of that plaster is still in the crevices, forced around the walls; and it loosens up, and sometimes, if the gas pressure is not great enough to force it out, it sometimes takes a long time to break the plaster off. If you have good gas pressure it may break into the wells and force it into the casing and you can pump it out and release it. There is a tendency for the production to increase as the plaster gives way under the pressure.

From my judgment of the conditions there, and my knowledge from an experience of 25 or 30 years, I think that well would be a better well if it had not been drilled with a rotary there is so much mud plastered in the walls of it. I don't think the well had a good chance to show what it really would be. I would think from my experience with rotaries that there is more oil back of that reservoir than is actually indicated by the present production of the well. I regard a well which produces 406 **[262]** bbls. as a pretty good well. From the conditions I saw and my knowledge of the territory and from my general experience in the oil business, I considered it a very good well; I thought the prospects were pretty good.

Up until the time I was there the Associated Oil Co., had brought in only two wells in the Elk Hills that had produced any oil. That was this well on 26 and the one on 30. There may be other wells there now. I believe there is one on 24 that was drilled down, but I did not visit that well; I was only just in sight of it; never went down to it. It is located below the hills. All I know of it is by hearsay.

CROSS EXAMINATION OF JAMES F. MC CAY.

I did not say that the well on Sec. 30 is now producing 400 barrels a day; I do not know what it is producing, because I have not been to it since the day I took the gauge of it. That gauge was taken after the pump had been on two or three days. Hav-

ing the pump on in a well drilled with a rotary would have a tendency to relieve the pressure from the inside of the casing and let the oil flow freely in through the perforations. Of course, the least pressure there is on the outside of the casing, the better vent the oil, or whatever is back of it, has got to come through the perforation it will let it come. It ought to remove part of the plaster. The relieving of the pressure on the inside and keeping the fluid out of the casing, in my opinion, would have a tendency to make it produce more oil. I do not know whether the production of oil from that well afterwards dropped off. All I know would be just from hearsay.

Q. (By counsel for defendants) "You have heard, though, that it did, didn't you?"

(By Mr. Mills, counsel for plaintiff) "We object to that."

A. I heard that it was not doing as well. I could not say that the production dropped down to less than 50 barrels, **[263]** because I never was informed. I could not say as to the real production of it. It is common to find wells that show heavy flow at first and then diminish quite materially. I did not have charge of the drilling of this well and have no knowledge of the formations through which it passed. All that I had to do with it was to bail it out and perforate it. I was sent there to perforate it and get it to producing. I was able to ascertain to a certain extent at what point the oil began to flow in that well; at what depth, in making the perforations. I believe there was one place—I don't

know; I think it was along about 3200—that when we perforated it at that point it showed a little more oil; and then again at 2700 feet, it showed still more after the perforation. I could not tell from that whether or not the oil came in from oil sands adjacent to the 2700-ft. level or somewhere below. No man can tell that. I have seen oil pass up around casing clear to the top of the hole. In perforating a well, you are unable to determine exactly at what point oil is actually coming out of the sand. If you have not kept a log of the well and know where you got the sand, and everything, in the drilling part of it, of course, in the perforations you cannot tell exactly where it come in. That can be best determined in the course of actual drilling itself. I am not in a position, from my observations of that well to answer the question as to what point oil is coming out of the sand. They had some trouble with the well in Sec. 26. I really forget just at what depth, but they wanted to take the 4½″ casing out, they had twisted off the drill pipe below and they could not go any further with their rotary, and they wanted to take out the 4½″ casing and sidetrack this drilling pipe, or portion of the 4½″ they had left in there, with the standard tools so as to make a clearance for the rotary to go ahead of it, and so I went over and jarred the string of 4¼″ casing out and took it out and **[264]** then put in the standard tools and side-tracked the casing that was below so that they had a clear hole about 20 feet below the top of this obstruction that was in the hole, to go

ahead with the rotary. I couldn't say what the depth of the well was at that time to be positive. It was somewhere in the neighborhood of 3700 or 3600 or something like that, but I couldn't say as to the actual depth. Every once in a while while I was working with it, oil would flow up—every half hour or so. It didn't flow water. It just acted as though the oil would come up through the water and when it would get a certain amount on top of the water it would flow that oil out. At the time I was there the well was still filled with water and all the oil that was coming out was just what oozed through this water. It has been five or six months, something like that, since I was last at this well on Sec. 26. I don't know its condition now and am not familiar with the log of that well.

REDIRECT EXAMINATION
OF JAMES F. MC CAY.

I have heard of W. S. Porter, of the Associated Oil Company. I don't know him personally. I believe he is general manager, Vice-President and general manager. I cannot say whether he is a competent oil man. He must be competent if he holds the position he is in. **[265]**

J. W. KAERTH, a witness called and sworn on behalf of the plaintiff, testified as follows:

I reside at Colusa, Colusa Co., Cal. I am a surveyor and civil engineer by profession, and am, and have been for about 24 years, County Surveyor of that county. I was employed as a subordinate un-

der Mr. Duee at the time that the Government survey was made of a portion of the lands in T. 30 S., R. 23 E., M. D. M., Kern County. While so employed, I was running the instrument. I was there with Mr. Duee. Spent about two weeks there then. To my recollection, our camp was in, I think the NE¼ of Sec. 33. Plaintiff's Exhibit E, examined by me, is a map of the survey, and our camp was on the NE¼ of Sec. 33, shown on that exhibit. At that time I went over that portion of the land that is shaded on that map. The land is included in survey No. 881, I believe. We found evidences there of oil, asphaltum. We called, it, for want of a better name—we called them asphaltum reefs. They had the appearance of ridges. We didn't know what they were at first. To my recollection those alphaltum reefs or ridges, as we called them, were rather plentiful; over the central part any way. Around near our camp there were plenty of them. I remember the main ridge or summit line of the hills over there. My recollection is that these asphaltum reefs or ledges showed up along the summit in quite a number of places. We removed some portions of these asphaltum reefs, or ledges, while we were there. How we come to remove them or dig out portions of them—in the first place we were using posts for corners, and we wanted to use rock if we could get it and we took these to be rock ledges. We sent our camp man out one day to see if he could not dig up some of that rock that we could distribute and use for corners. That evening, when he came in, he came

over and said it was not rock at all—it was tar. I went and looked at it and found it was hard cakes of—we called it asphaltum. We used to burn it for camp **[266]** fire. Used it for fuel. It would burn all right. We would have to use some twigs, brush or something, to start it. After it was started it would burn. We could not set it afire without using other means to get it to start.

We found mineral location notices on the land that was surveyed by us at that time, in T. 30, R. 23. There seemed to be notices pretty much all over the land. We found corner posts setting pretty much all over the land with notices, and a great many of these notices were just written and folded up and placed under a rock on top of the monument. We found a few stone monuments there marking the boundaries of claims, where there was any stone to be had. There was not very much there. I remember two or three small oil seepages on the land, what appeared to be oil seepages, small places on the land. I did not consider the land of any value for agricultural purposes. It was poor, very rough and precipitous and cut up badly by gulches, ravines and there was no water on it. We had to haul our water from McKittrick. At the time I was there there was no vegetation whatever, except small brush, sage brush or something of that sort, to my recollection. Of course it was in the fall of the year, before the rains. There was nothing growing on the lands, though, at that time. On the west side of the tract there were a couple of cabins. We did not go right to them, but I

could see they were building something there. They told me they were building oil derricks. I could see they had new lumber there and were putting up some sort of a structure. The farthest one south, when we left, was getting up apparently 20 or 30 feet high. These were along the west side of T. 30 S., R. 23 E., on a portion of the land we surveyed.

CROSS EXAMINATION OF J. W. KAERTH.

The cabins and derricks were along that tier of sections [267] 19, 30 and 31. 31 was not covered by that survey, but about 18, 19 and 30, or somewhere along there. I could not say on which of those three sections they were located; but just the way I could picture it now, I would say probably in section 18 and section 30, I may be mistaken about that. We closed in section 18. I think section 18 was surveyed before that. We closed in on those old lines. The upper one of the cabins and derricks might have been on section 18. The lower one, I think most likely was in section 30, I could not say on what portion of it, I think possibly—I would not attempt to say, but I believe, though, in the southern half of it. As I recollect it it was nearer the west boundary than the east boundary of the section. That would put it in the SW¼. I may be mistaken about it. That was not in the old survey. Sec. 30 was covered by our survey. We run the whole section. We had to trace all of the lines and run the whole section. Possibly the SW¼ of Sec. 30 had been surveyed before, in

1855, I don't remember. That survey had possibly been accepted, I don't remember. I know there were some portions of sections had been run. I know 31 had been run out, and Section 13, and some of those. My recollection is we spent about two weeks in that township, and during that time I was thoroughly over that township. During that time my attention was confined to the survey of that township, and in the course of that survey I had occasion to go to every portion of the township covered by that contract made with Jas. M. Duee, in 1901. My recollection is we completed the survey near the middle of December. To the best of my recollection our camp was in Section 33 of that township, and on the south slope of the Elk Hills. I found evidences of oil and asphaltum over a good portion of that township. I found those ridges or reefs. If I were going to describe them as they appeared there, I would say that they had very much the appearance, as I remember them of an ordinary ledge of sandstone. The surface of them was a **[268]** sort of grayish color. As we broke into them they were quite black, but the outer surface was gray. The material would burn. We did burn it in our camp fires. We did not dig out any except near the camp. We did not have to go very far to find plenty of it, and we dug it out around there and used it, but as I remember it, we saw it appear pretty much along the summit at different places all along. I cannot say hardly how many places. We saw it in a great many places, but just how many would require a

rather wild guess to specify the number. I would say we found it in more than a dozen places. I would say that what we took out was in sections 33 and 34, in the NE¼ of Section 33, because we found it right close to our camp, and in the NW¼ of Sec. 34, because it was closer to our camp. As I remember, the oil seepages we found there, one of them was in either section 25 or 36. The other was up in 17 or 2- of Tp. 30, Range 23. If I were going to specify where we found the oil seepages, I would say near the south line of Sec. 17, and near the south line of 25. I was going to say that whatever we found was usually close to the section lines, because we did not get off the lines very far. We were not interested in anything but running the lines and did not go off the lines very far. Whatever we found was necessarily pretty close to the lines. According to my recollection, the oil seep in 25 was in the NW¼. I remember it as being near the SE¼ of Sec. 25. That oil seep was just a small spot there in the bottom of the gulch, in a depression; just a small black spot in the soil, that had the appearance of oil. I was going to say it had the smell and appearance of oil. The asphaltum reefs were hard. The oil seep was soft; it was not hard like the other. I was last on the ground when I left that survey, and have never been back since. I don't think I could be mistaken as to the existence of these asphaltum reefs at the places I have indicated, although I am giving it entirely from my memory of nearly 11 years **[269]** ago, I think I have them correct. There is what I

call oil seeps in that township. Of course the oil was not running out there as water would run out of a spring, but the sand was black and had the smell of oil. We all noticed it and talked about it at the time, but the oil was not coming out like water would come out of a spring, or anything like that, but we called them oil seeps. An oil expert might not call them oil seeps. I don't know. I would be willing to go out on Tp. 30, R. 23, with the representative of the Defendant's company to see if I could find what I considered oil seeps and asphaltum reefs at that time. I can find the reefs. I know they are there. As far as those seeps are concerned, they might not be considered oil seeps by an expert, but that is what I call them. I have described all the indications I found in that township. Mr. Duee was present during that survey. He followed up and set the corners. I ran the lines and set temporary corners and he followed up and set the permanent corners and followed me up afterwards. He was engaged in active work in the field. I ran the lines and made the preliminary notes in the field. I then afterwards transferred the notes from those rough field books onto another book, in pencil, and turned them over to Mr. Duee. That is the last I ever saw of the notes. I had nothing to do with the final form of those notes, as turned in to the Surveyor General's office. I wrote them up—just exactly what I had done in the field—and Mr. Duee would give me the kind of corner that he had set afterwards and I embodied that in the notes, then turned the notes

over to him and never saw them afterwards. In the notes I wrote the general description of the land. When I turned over this pencil copy, I wrote the general description following, which is always to follow the survey. I characterized the lands as mineral. That was done by reason of what I observed on the ground, in the way of asphaltum reefs and oil seeps. That was my reason for characterizing them as mineral. I found location notices scattered through all that territory. **[270]** I did not see any one actually engaged in mining of any kind in that township. The only persons I saw were the ones at these two places I have spoken of where there were signs of buildings, and while we were camping there I think I saw two or three rigs go across. There is a ridge going across the township, which I think is shown on the map; and I saw two or three rigs cross about that ridge, but they did not seem to stop for anything, they went right across the country, they were apparently going beyond that or elsewhere. I saw no actual drilling operations going on anywhere in that township or any mining operations of any kind.

Q. Did you find any persons mining at any place in that township?

A. No sir.

Q. Could you, Mr. Kaerth, spend the time to go out to the Elk Hills immediately and make an examination?

A. What is this? Wednesday?

Q. Yes.

A. I think so.

Mr. Lewers—Very well. We will be very glad to make the arrangements. That is all.

Mr. McCormick—That is all, Mr. Kaerth.

Mr. Mills—That is all.

J. B. TREADWELL, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I live at Tropico, Los Angeles County. I am 66 years of age. From the spring of 1893 until the summer of 1903 I was employed by the Southern Pacific Co., in developing and producing oil for them. It was in Summerland, Kern River and McKittrick where I carried on the principal operations. My duties[271] extended to the Coalinga field. I knew Mr. Collis P. Huntington in his life time. I knew H. E. Huntington and Julius Kruttschnitt. I knew each of the three during the period I operated in the oil fields above indicated. They were my superior officers and I acted under the orders of each of them at different times during all the time; that is, subsequent to that Mr. Hays came in as president and then Mr. E. H. Harriman, in that period. Mr. Hays came in on the death of Mr. Huntington and took his place, and it is my impression that he continued in it about a year. I ceased operations in Kern Co. in 1903, and during the summer of that year went to Alaska under contract wth the S. P. Co. E. T. Dumble took my former place with the

company, in addition to his position as geologist of the company, and continued to do the work that I had been doing previous to the time he took my place.

I knew Josiah Owen. He seemed to be in Mr. Dumble's employ. Mr. Dumble had been geologist for the Company before he took my place. I don't know how long. I knew he had been geologist since, perhaps 1901 or 1902. I was in the employ of the Company at that time. Later, I met Mr. Dumble in Oregon. He told me he was looking up some coal deposits, examining them in Oregon, near Bedford. I don't know whether it was on Government land or other land. I understood it to be in connection with the Company that he was looking up these coal lands. I was in the employ of the Company at that time. I did nothing there in Oregon in connection with the coal lands at that time, further than that he wanted me to go out with him to the place. They had some paraffine they had discovered under a lava deposit, and they had been selling it for bees wax. The people up there did not know what it was. It was about eight miles to the East of Bedford, about eight or ten miles from the railroad. That was before I severed my connection with the oil region, in the San Joaquin valley. Mr. Josiah Owen was with Mr. Dumble at that time. That [272] was the first time I ever met Owen.

During the time I was employed by the Company in the Kern River, McKittrick and Coalinga fields, as I have indicated, I don't know, really, who had charge of the withdrawing of the railroad sections,

the odd railroad sections, in those fields from sale, any further than this: I wrote to Mr. Madden whenever I wanted any lands withheld. I did this under instructions or directions from either Mr. Kruttschnitt, Mr. H. E. or C. P. Huntington. When orders of that kind were given, or letters, of a character I have just mentioned, were written to Mr. Madden, they were complied with as far as I know. Mr. Madden's Christian name is "Jerome", and his headquarters were in San Francisco. He was the manager of the Land Dept. for the S. P. Railroad Co., during that time or a portion of that time. I was frequently in his office during that time. The two Huntingtons and Kruttschnitt were Madden's superior officers. In one instance, as I know of my own knowledge, instructions were given by C. P. Huntington to Mr. Madden with respect to the railroad lands, that is, the odd sections of railroad lands that had been patented to the railroad in oil districts. That was when Mr. Madden had objected to my asking for the withdrawal from sale of so much lands. Then I was sent for to meet at Mr. Huntington's office. Mr. Huntington asked Madden what his grievance was, and he stated that they had opportunity to sell the lands and that I had withdrawn from sale large blocks. He wanted to know who wanted to buy the land. They did not seem to know exactly. I was asked, and I told them I supposed they were buying them for the oil indications, that is, for oil lands. If they had bought lands that way from the railroad, they would buy cheaper than they would

from the Government; they would get it for $2.50 per acre, 20% down and the balance to be paid along under their contract, and then the question arose if I was not with-**[273]**-drawing more than there was oil in. I told them I didn't know, that I was withdrawing enough so as to be sure to take in all that did carry any oil, and even more. So Mr. Huntington told him that on instructions received from me, to withdraw the sales.

I could not say exactly how much land I withdrew during the period I was employed with the Company, in 1899 until left there in 1903. I think in the neighborhood of perhaps 150,000 or 200,000 acres. I recommended these withdrawals on account of the fact that there might be oil there and to give them time to develop and see whether there was oil there or not. They could get just as much for the land after they found out there was not any oil in it as they could then.

In answer to a question as to what experience I had at this time, or up to this time, with oil lands, formations, and the value of lands for oil, I would answer I have been with the Union Oil Co., and Pacific Coast, and others—making surveys of topographical and geological features for the purpose of locating their territory, and also I was deputy United States mineral inspector and surveyed a great many mineral claims or oil claims for patent. I have had ten or fifteen years experience in oil fields, which covers geological experience. I had experience as an oil man in the Texas field prior to the time I severed my connection with the San Joaquin valley.

In answer to the question as to what I had to do during that time I was in the employ of the Company with reference to the leasing or sale of railroad lands, the odd numbered sections, I would answer: "Frequently an order came out to me—well, it was principally in Coalinga, suggesting that I name the condition, the shape of the land to be leased. Those I made my report on and returned either to Mr. Kruttschnitt or to Mr. H. E. Huntington. So far as sales were concerned, there was only one sale made, and that was in the Kern River. Mr. Hays wished me to pass **[274]** on the value of one section, or part of a section there, that the Standard Oil wanted to put their oil tanks on." I do not remember what section the Standard Oil Company wanted to buy. It was in the SW portion of the Kern River field, and the tanks are there, I think, today. It was a railroad section obtained by patent from the Government, under the railroad grant. The lands referred to as railroad lands which I ordered withdrawn, under instructions from H. E. Huntington, C. P. Huntington or Kruttschnitt, were lands that have been patented to the Railroad Company under the Act of 1866.

In pursuance of instructions given me, or in the line of my duty, I withdrew lands in the vicinity of McKittrick, but I never worked any of the lands of the Company in McKittrick, that is, of the railroad lands. The most of the lands I had asked to be withdrawn along there had been acquired—that crude oil—by the Buena Vista and the North Buena

Vista, and the Company known as, I think, The Georgia Oil Co.,—the Union Oil Co., of Georgia. They covered pretty nearly all of the seepages upon which —were shown, then in McKittrick. I withdrew, or reported and requested the Southern Pacific officials that there should be withdrawn a large quantity of land in the vicinity of McKittrick. That was in 1899 or 1900. I think I requested the withdrawal of the sections in the vicinity of McKittrick at one time. In requesting the withdrawals I took a map issued by the Kern Land Co., or Kern Valley Land Co., whichever the name is, and colored the odd sections that I wanted withdrawn from sale and forwarded that to Mr. Madden. The odd numbered sections thus colored would extend from three or four miles north of McKittrick down to Midway, then included Midway on to Sunset. That might not have been in one notice of withdrawal from sale. It might have been in two, and the request might have been as late as 1902. I would not be at all surprised if the second was in 1902. I **[275]** think I made less than half a dozen recommendations for withdrawals altogether. I sent them to Mr. Madden. I had nothing to do with the leasing or sale of railroad sections in the different fields,—I mean sections patented from the Government under the act of 1866, other than the withdrawals I have already spoken of, except when I was asked my opinion and to decide under what royalty they should be leased, and the form of the land in a subdivision. I did not execute the leases. Those instructions came from Mr. Krutt-

schnitt or Mr. H. E. Huntington and I made reports on those things to them. I was consulted with reference to those leases during the whole time after they commenced to make leases, and I think they first commenced to lease about 1899 or 1900.

In answer to the question as to whether there was quite an effort on behalf of oil corporations and persons to either lease or purchase railroad sections in the Kern River field for the purpose of developing them for oil about that time, I answer: "The Kern River had all been purchased before I asked for any sales to be discontinued, with the exception of a portion of Section 3 and the section afterwards sold to the Standard Oil Co., and another piece which was afterwards leased to some parties to drill on and which they failed to get anything on." I had been out there on the ground, I guess, a month or six weeks before these sales were made. Had I known that there would have been a rush in there to have taken those, I should have asked to have the sales discontinued, but that all took place when I was at McKittrick and we only had two trains a week and I came into Los Angeles and found that they were purchasing all that land at $2.50 per acre, and I telegraphed to Mr. Madden to withhold the further sales and it had all gone except these three pieces that I have mentioned.

I think section 3 is in T. 28, R. 28. It was after- **[276]** -wards developed under my supervision and produced oil. My supervision of the development and production of oil on that land was by virtue of

an employment with the Southern Pacific Co., which I have already mentioned. A portion of that section had been sold by the Company years before. In fact, all of it had been sold and foreclosed, bought and came back to the Company; the purchasers did not make the full payment. It was sold several years before the oil excitement. The oil produced on that part of section 3 that was developed by me was loaded on to the cars and shipped to different points on the railroad, as instructed by the different orders that came to me for oil. It was used by the railroad. I kept a set of books there. As to what charge was made to the railroad or to anybody for the oil that was produced and shipped, I would say all that was kept was the quantity of oil run into my expenses, and those were forwarded first to Mr. Kruttschnitt's office, while I was conducting the development and operations in my own name; and subsequently we changed it to the Southern Pacific and then my returns were made to the Auditor of the Southern Pacific. I conducted the operations on Section 3 in my own name for a time. The property did not belong to me, but I had been conducting other operations in my own name for the Southern Pacific Co. That was done because I first went to Summerland and bought some property there and then I went to McKittrick and got leases; and the object was that if the Southern Pacific was buying them they would have to pay a greater price, and if I was taking it up myself it would be a different proposition.

To my knowledge no charges were made against

the Southern Pacific Railroad Company or any one else for oil that was produced and shipped from section 3, either while I was operating it in my own name or when it was afterwards operated in the name of the Company. I could not say for a certainty who owned the title to the fee of section 3, upon which this oil was produced. I paid no rental or royalty when it was operated in my name, and [277] as to any other company, do not know whether rentals or royalties were paid. I was also engaged for the Southern Pacific Co., in the production of oil on what was known as the J. B. Treadwell lease, in McKittrick. It was not known as the S. P. lease. It was a lease that I took in my own name, and operated in my own name, the Southern Pacific paying all the expenses and receiving all the oil. I was acting for the Southern Pacific. It might have been afterwards called the S. P. lease, later, when it became changed over to the returns and operated openly by the Southern Pacific. That lease was not operated on railroad lands. It was operated on lands patented to the Buena Vista Oil Co. It was on the SW¼ of the SE¼ of Sec. 20, T. 30 S., R. 22 E. There was another property at the north, what we called the North End field, on the North Buena Vista patent. It was operated by me for the Southern Pacific Co. The Buena Vista and the North Buena Vista Companies owned the title to the lands upon which those developments took place.

I got the data or information upon which I made my reports respecting the withdrawal or leasing or

sale of railroad land in Kern County by just being upon the ground looking over the country generally. I got it from personal investigation. I had maps of all the different fields, and I kept those records up as to the depth of wells, sand, etc., they passed through, the quantity of oil produced. They might say these records belonged to the Southern Pacific Co. I was not required or asked to keep those records and maps. After I left, I think I had a duplicate of about everything that I had in the field, and those were destroyed. The balance were either left in the office or they were in the general manager's or the president's office, of the Southern Pacific.

I took Mr. Dumble over the oil fields in Kern Co., at the time that he came there to supercede me. I went with him, [278] spent several months there off and on to go with him over the field and show him everything that was being done. Mr. Owens was not present. He might have been in his employ, but he was not present. I think that was early in 1903.

CROSS EXAMINATION OF J. B. TREADWELL

I prepared maps showing the development of oil in the various operations in the territory in McKittrick. My duplicate maps were destroyed at my residence in San Francisco during the earthquake and fire of 1906. I had my library and my cabinet and everything there, field notes, running back for a great many years and the time my house was destroyed they were destroyed with it. The originals

of those maps were probably sent to some of the officials of the Southern Pacific Company. I was employed by the Southern Pacific Company. I was never employed by the Southern Pacific Railroad Co. I never had anything to indicate that I was employed by the Southern Pacific Railroad Co. My letters and all were in connection with the Southern Pacific Co., headings and all. The Southern Pacific Co. was operating the railroad in Bakersfield at that time. I was employed, and it was one of my duties to get oil to use as fuel on the line. The Southern Pacific Co. began to use oil as fuel before I went with them. I was engaged in the oil business in Summerland, and I sold them oil before I went—that was three years before. How much longer, I don't remember now, when they commenced to use oil. They didn't use oil as extensively then as they are doing today. Very little was used. The Southern Pacific Co. began its extensive campaign to procure fuel oil when they engaged me. That was in 1898 or 1897—I forget which—that I went there. Either early in 1898 or late in 1897. It was my duty to procure oil for the Southern Pacific [279] Co., for fuel on its road. When I went into McKittrick and also into the Kern fields, and elsewhere, it was for that purpose.

I had nothing to do with the examination of lands for the purpose of procuring patents for the Southern Pacific Railroad Company. I had no connection whatever with that. On various occasions I had submitted to me the question whether certain lands al-

ready patented to the Southern Pacific Co., should be sold. When these questions were submitted to me, my attention was directed to the matter of the oil in the land. That is, not in all cases, but at Coalinga that was true. There were no applications that I remember of at McKittrick for the sale of any land; that is, no orders to me to make any applications. I made blanket withdrawals of lands near McKittrick from sale. I know the Elk Hills. None of my withdrawal orders took any portion of the Elk Hills.

Q. "Why not?"

Mr. Mills (Counsel for plaintiff)—"Objected to on the ground that it is irrelevant, incompetent and immaterial and not cross examination."

Q. BY MR. LEWERS (Counsel for defendant) —"Why didn't you, Mr. Treadwell?"

A. "I had been over in the Elk Hills on some location notices that I had been interested in, that is, my name was put down."

MR. MILLS—"I desire again to renew the objection that it is not cross examination; and I desire to notify counsel that any new matter that is brought out by this witness on cross examination—that in that respect the witness will be treated as a witness for the defense, and we will claim the right, if we see fit to exercise it, we will claim it anyhow to impeach the witness as the witness of the defense."

MR. LEWERS (Counsel for defendant) after responding to the **[280]** above, said: "Complete your answer." A. "After seeing the land I did not consider it worth doing the annual labor on, and did not

consider it, at that time, oil land of any value; therefore I never reported to the—asked to have that withheld from sale, for that reason."

Q. "I understand you to say that as a result of your examination made in the Elk Hills, you did not consider that land as of any value for oil."

MR. MILLS—"It may be understood that my objection goes to all this line of examination."

MR. LEWERS—"Yes."

A. "That was my conclusion at the time." The reason that my name happens to come on the location notices referred to is that several of the drillers had been over and had an idea it was oil land and suggested that I join with them in making the location. I said "All right, go ahead." They made the locations and then I went over afterwards to see, and as a result, concluded that I didn't want it and made no attempt to keep up any of those locations. I do not know whether the locations were ever recorded. I don't remember.

The lease referred to, near McKittrick, from which the Southern Pacific Co., obtained oil, was on land patented to the Buena Vista Oil Co. There was no lease and no oil developed and used while I was there from any land belonging to the Southern Pacific Co. I mean the Southern Pacific Railroad Co. I do not know anything about what charges were made by the Auditor of the Southern Pacific Railroad Co., against the Southern Pacific Co., for any oil. I don't know how the books in San Francisco were kept. As far as my office was concerned, or my duties con-

cerned, it was one of my main duties to look after the production of oil for fuel. In the course of the performance of my duties, I had occasion to examine surrounding territory quite [281] carefully and aimed to be—I think I was familiar with the general oil situation in the vicinity of McKittrick up to the time I left there.

I don't remember any discussion or any talk in McKittrick as to the Elk Hills. It was not considered promising oil territory at that time. The locators who went in there, as far as my experience is concerned, were simply oil drillers and working around the oil fields. They did not do any actual development work that I know of. That territory was not developed in any way, or prospected in any way, by competent oil men while I was in McKittrick.

In the various fields where I was employed I advised the withdrawal of a considerable amount of land. In doing so, I did not determine that each and every acre of the land withdrawn was actual known oil land. I followed the system of taking the trend of the oil and located enough so as to be sure to go far enough on the dip to include all the oil that they, in the future, might develop, and even further. I made a liberal allowance for future probabilities. I did not include any part of the Elk Hills.

In answer to the question as to what was the general belief and understanding, at the time I was employed at McKittrick, as to the depths to which an oil well could be economically sunk, I will say, when I

first went to McKittrick we did not think of going more than 400 or 500 feet and up to 1000. The oil territory generally through the State was small wells. Very seldom got a 100 barrel well and the sinking of deep wells, going out on the dip of the strata, is a subsequent operation, and has been followed out, or felt out, by going next the apex; drilling a shallow well and then going out deeper until they have gone to as deep as they could go, I suppose. In 1904, in considering the maximum depths that we could sink a well and get any profit **[282]** from it, we did not calculate to get over 1000 feet or 1200 feet.

Q. "Well now, if you had been advised at that time that a well—oil could be found at a depth of over 3000 feet, would you have recommended development of that well?"

MR. MILLS—"Objected to on the ground that it is irrelevant and immaterial."

A. "Not as long as we could have got shallow wells. It would all depend on the quantity of oil you could get out of the well."

If I had been advised that there was a prospect that I might get oil, but no certainty, at a depth of over 3000 feet, I would not have sunk a well.

I never informed Mr. L. G. Sarnow or Fred Sarnow that the territory in the Elk Hills was good oil territory. I don't remember a man named Duee. I cannot remember the name. May have known him, but don't remember. I never informed or advised anybody while I was operating in McKittrick, or

during that period, that the Elk Hills were good oil territory. If I had believed it good oil territory I would have got in and got some for myself.

REDIRECT EXAMINATION OF J. B. TREADWELL.

I never, during these withdrawals, recommended the withdrawal from market of any land in the Elk Hills. I may have included section 31, in T. 30, R. 23, in a withdrawal. I don't consider that in the Elk Hills. The map introduced as the Government Exhibit I, may show a small portion of it as being in the Elk Hills, if that map is correct. I could not say certainly whether I ever included that in any withdrawal. I am not prepared to say whether section 25, in T. 30, R. 22, is in the Elk Hills or not. I think both of these sections were included in patents to the Southern Pacific Railroad Co., at the time I was [283] in their employ.

Q. "Will you swear, on your oath, that you never included any of those lands in your orders to Mr. Madden?"

Question objected to by Counsel for defendants on the ground that "It is unnecessary excresence of expression on the part of counsel; and we object further, on the ground that he is cross examining his own witness on redirect examination."

A. I don't know whether those sections are really in the Elk Hills or not. They might be right in the foot hills or slope of the Elk Hills; and I am not prepared to state because I could not say what partic-

ular sections that I asked to be withdrawn." I don't know by sections any of the patented lands in the Elk Hills, belonging to the Railroad Company during the period of my employment, except the two I have named. I didn't go over the Elk Hills during the time I worked for the Southern Pacific Railroad Co., for the purpose of identifying the sections. I was pretty familiar with the patented lands of my employer, and I asked for discontinuance of sales, I withdrew sections, that I had not been on.

At the time I left the employ of the Southern Pacific Company I did not know, as a matter of fact, that the South part of T. 30, R. 23 had not been patented to the Southern Pacific Railroad Co. I made a map of the lands that were patented and I would not have made an order of withdrawal to Madden which included lands which had not yet been patented. I would not have included in an order of withdrawal the lands embraced in the patent dated Dec. 12, 1904, and the fact that they had not been patented would be a sufficient reason for my not doing so. I don't know positively now, as a matter of fact, that I asked the withdrawal of sections 25, in T. 30, R. 22, and Sec. 31, in T. 30, R. 23, and could not tell whether I had done so unless I had the original maps before me, that I made at that time. **[284]**

I don't remember that I knew a man named Thomas J. Griffin. He didn't work for the Arroyo Bravo Co., under me in Texas, because we didn't have the Arroyo Bravo Co. That Company was created after I had given up Texas. I have no recol-

lection of having written a letter to him, at his home in Texas, after I returned from Texas, sending him a map of the country extending from Sunset to McKittrick, including the Elk Hills, and asking him to organize and come up there and locate the even numbered sections between the Railroad sections, in the Elk Hills, and I don't believe I wrote any such letter. I never wrote to Mr. Griffin or any other man, sending maps of this country, stating that the Railroad Co., owned every odd numbered section included within the maps, that all the lands were mineral; that they had yet lands to be patented which were mineral, and which I knew were mineral, in the Elk Hills; and that I wanted them to come up and organize and locate those lands.

I am not now riding on a pass of the Southern Pacific Co., or the Southern Pacific Railroad Co., and have not had such a pass since the law of the State of California prohibited riding on passes. If that law had not intervened, I would, no doubt, be still riding on such a pass; and I feel that I would be entitled to it, in consideration of the money I have made for the Southern Pacific.

I may have gone, in company with John Jean and L. G. Sarnow, into the Elk Hills to discover, or to examine a previously discovered oil seep on the NW¼ of Sec. 32, in T. 30, R. 24, but I don't remember of seeing any seepage. I know I went out there, I think, with either one or both of them, I don't remember whether I went with both or one of them. When I went out, I went from my own camp at Mc-

Kittrick. I don't remember seeing any oil seepage.

Q. "Did you give any opinion at that time?"

[285]

A. "I don't remember the particulars, whether I got off my horse or not. The country, at the time we went out there was bare—some sage brush—the grass had all been eat off and you could see the formation as you rode over it." I don't remember that at that time I expressed any opinion to Mr. Sarnow as to the possibilities of oil in that country. If I did, I said it was no good, in my opinion. I paid my portion—I may have paid all the expenses of the locations in that vicinity, in which I and Mr. Sarnow and Mr. Jean located a number of sections of land.

Q. "Was that because it was no good?"

A. "No."

RECROSS EXAMINATION OF J. B. TREADWELL.

I paid for hiring the horse to go out there and recording. That would be all the expense, it would amount to nothing. I was never called on to pay anything for development or location work. I had in my possession maps and data showing the land that was actually patented to the Southern Pacific Railroad Co., in that vicinity. The line of the withdrawal ran generally west and southwest in the flat valley to the south of the Elk Hills. I was subpoenaed in this case, as a witness, April 19th, this month. When I was subpoenaed I came here to the Court House

and had an interview with the Attorneys for the Government, Mr. Mills and Mr. McCormick. I was told this morning when I would appear as a witness in this case. I have had three interviews with the Attorneys for the Government. I was asked by them whether or not I had been employed by the Southern Pacific Railroad Co., and replied that I had only been employed, as far as my knowledge was concerned, with the Southern Pacific Co. I don't remember what response was made to me by either of them, when I told them that. I think they got all of that down. They had a shorthand reporter, who took down our conversation. There was nothing said with refer- [286] ence to Mr. Lewers, attorney for the defendant, in that conversation. They asked me whether I had held a conversation with Mr. Lewers, and I told them at the time I didn't know him. I had never met him. I never had any conversation with Mr. Lewers.

REDIRECT EXAMINATION OF J. B. TREADWELL

Before I appeared on the stand today I had had a conversation with the counsel for the Railroad Co., or some of its representatives, not exactly as to what I was to testify about here. They interviewed me on some of the questions, they wanted to know if I had been over the Elk Hills. I talked with the defendant's counsel in court here. He wanted to know if I had been over to the Elk Hills and was familiar with that section. I told him I had only been over, I

think once or twice and rode over it, but I had been interested by being located in some locations there, but didn't consider it, after seeing the ground worth keeping up. I think he asked me if I had been employed by the Southern Pacific Co., or Southern Pacific Railroad Co. I told him the Southern Pacific Co. I think that conversation was last Monday. I was subpoenaed on the 17th, I think it was, and I think Monday was the 20th. I think it was the day after Mr. Mills asked me, or the same day that he asked me, if I had met any of the counsel for the other side. That conversation took place in Judge McKinley's office. He telephoned me to come there. When I got there I found that the counsel, that is in Court here, there, Mr. Lewers, Mr. McKinley came in afterwards. No one else was there—there might have been some clerks, but no one was present during the conversation. The conversation might have lasted ten minutes. I did not volunteer to go there. It was proper, nothing wrong to go there, although called as a witness for the Government. Nothing that I had to testify to but what any conversation with the other side would make no difference in my [287] testimony. It wouldn't make a particle of difference. I have got to tell the truth. I didn't tell Mr. Mills, at the first conversation I had with him, that the Elk Hills, in my opinion, was the best part of the oil territory in McKittrick field. He must have been mistaken in that. I didn't say that to him. I didn't say that I and Mr. Sarnow and Mr. Jean located there because of that, but that I didn't

keep it up because I had other interests and could spend no time on it. He must have misunderstood that. I do not think, if he will take his stenographer's notes, he will find any conversation of that nature. I had a talk with Mr. Gardner, one of the Government's Special Agents, the only conversation I had with him, he called on me at the California Club and asked me if I knew that country up there. He didn't say any particular section. And he wanted to know if I would kindly go up to see Mr. Mills. I don't think I had a conversation with Mr. Gardner in the office of the United States attorney during Mr. Mills' absence in Washington, with respect to the Elk Hills. I didn't have that conversation. I didn't have any talk with him elsewhere about the Elk Hills. Since the time he asked me to go up to Mr. Mills' office, I had a talk with him. He called up on the phone, and he had an album with a lot of pictures in it, and wanted to know if I could identify any of them as to the man who took them. My picture appeared in several of the pictures. I told him I I could not recollect and didn't, and I could not tell who took the pictures. Some professional man was making pictures through the field. I told him I thought Charles Canfield, perhaps, could tell him about it. I did not disclose to anyone representing the Government in this case, since my interview, on Monday, with Mr. Lewers and Mr. McKinley, that I had been in secret conclave with them with reference to the issues in this case. I kept that to myself. **[288]**

RE-CROSS EXAMINATION OF J. B. TREADWELL

The interview I had on Monday morning in regard to this case was entirely with Mr. Lewers. Judge McKinley came into the office, but was tending to other matters and went out. There was no suggestion at all made to me by Mr. Lewers, or any other representative of the defendant, as to what I should testify to or what I should not. I would regard such a suggestion, even if made by anyone, as totally unwarranted, whether it came from a Government representative or not.

REDIRECT EXAMINATION OF J. B. TREADWELL

I do not mean that any Government representative indicated to me what I should say here. They didn't.

[289]

H. M. SHREVE, a witness called and sworn on behalf of the plaintiff, testified as follows:

I live at Tulare, Tulare Co., California. My present business is banking in that City. I am Vice-President and Manager of the First National Bank there, and have been since 1902. I am acquainted with the country around the present town of McKittrick, in Kern Co., California. I first became interested in that country in 1888 or 1889. I was there first taking up land, locating it for mining purposes. I, with associates, located land there. The locations were all in T. 30, R. 22, in Sections 21, 19 and 29. The Southern Pacific Railroad Co., made claim to

those odd-numbered sections which I have described, under the grant of July 27, 1866. They made application for the land at the Visalia Land Office. We had made the locations before the Company made its application, and we protested against the issuance of patents to these lands because of the alleged mineral character. The Tulare Oil & Mining Co., had been organized at that time. I was one of the organizers and stockholders of that Company. The Company was organized for the purpose of holding the lands that had been located in the Buena Vista district, T. 30, R. 22, and the interests which I and my associates held as locators of the land described, had been at that time, previously transferred to that Company. Upon the initiation of the contest or protest against the Company's application for patent, an agreement or understanding was made by us with the Railroad Co., as to the relinquishment of a portion of the land. That must have been in the latter part of 1899. In pursuance of that agreement a part of the land was transferred to the Tulare Oil & Mining Co., by the Southern Pacific Railroad Co., and a relinquishment was made by the Tulare Oil & Mining Co., to the Southern Pacific Railroad Co., of some of the tracts. Referring to Section 21, the local land office at Visalia had **[290]** rendered a decision as to the character of that land previous to that date. It was favorable to the Southern Pacific Railroad Co., and the Tulare Oil & Mining Co., sought a re-hearing upon that question, and pending that re-hearing, the agreement which I have referred to was entered into.

I was Secretary of the Tulare Oil & Mining Co., at that time. The agreement was in writing. I think when the negotiations were consummated, closed, the agreement was returned to the Southern Pacific Co. Subsequent to that decision the Tulare Oil & Mining Co., made a showing of minerals on Sec. 19, T. 30, R. 22. I believe that showing had an influence upon the Southern Pacific Railroad Co., in effecting this compromise.

I knew Jerome Madden. He was at that time Land Agent for the Southern Pacific Railroad Co. As a result of that agreement a deed was issued—or, rather, no protest was made in the land office; patent was issued, deed was issued by the Southern Pacific Railroad Co., quit claim deed, to the Tulare Oil & Mining Co.; the Tulare Oil & Mining Co., by quit claim deed, deeded to the Southern Pacific Railroad Co., and placed it in escrow, and, after showing of oil was made on the SW¼ of 19, the deeds passed, the Tulare Oil & Mining Co., taking a deed to the SW¼ of 19 and the Railroad Co., taking a quit claim deed to the lands in 21. I had a location on section 29. Oil was discovered on that territory by lessees; not by our Company. It would be rather difficult for me to give the date of that discovery. I could refer to the minute record and tell the date. That record is the record of the Secretary of that Company.

Q. "And made by yourself?"

A. "Yes sir; it was, at this time."

Q. "What date was that?"

A. "The matter appears in the minute book

previous to that [291] in Part 1; but it was in 1898."

They made a showing there of a heavy oil, liquid asphaltum oil. The Railroad Co., at the time it was seeking to obtain, through selection, that land, knew by its agents, oil experts or others, of the mineral character of that Section 29. Mr. Treadwell knew about it. He was present up there and saw the oil at the time I was there. It would be difficult to say how much oil was being produced at that time. It was a heavy oil. They didn't have the sand, but I should judge they were getting possibly three or four or five barrels a day. The quit claim deed referred to by me, relating to the fractional SW¼ of Sec. 19, T. 30, R. 22, was dated Feb. 21, 1900. I recognize the paper now handed to me as that deed.

Thereupon counsel for the plaintiff offered said deed in evidence, which was marked Plaintiff's Exhibit L, a copy of which is as follows:

QUITCLAIM DEED NO. 11980.

THIS DEED, made February 21st, 1900, between the Southern Pacific Railroad Company, a corporation, D. O. Mills and Homer S. King, Trustees under the trust deed hereinafter set forth, the parties of the first part, and Tulare Oil and Mining Company, the party of the second part,

WITNESSETH: That

WHEREAS, on April 1st, 1875, the said Southern Pacific Railroad Company, by trust deed bearing that date, conveyed to D. O. Mills and Lloyd Tevis, the successors and assigns, all lands granted by the

United States to aid in the construction of the said Company's railroads, in trust to secure payment of certain bonds particularly set forth in the said trust deed; of which the lands hereinafter described are a part; and

WHEREAS, the said trust deed provided that the said [292] company may sell the lands in it conveyed as opportunity occurred, upon terms agreed upon by the said Company and Trustees; and that when any tract or parcel of said lands shall have been sold and the purchase price fully paid, it shall be conveyed in fee simple by the said Company and Trustees, to the purchaser thereof; and that such conveyance shall release the land so conveyed from all lien or incumbrance of the said trust deed, absolutely and forever; and

WHEREAS, the said trust deed further provided, that in case a vacancy should occur in the number of said Trustees, such vacancy should be filled by the nomination of the remaining Trustee, subject to the approval of the Board of Directors of the said Company; and that the person so nominated and approved, should, immediately upon his acceptance of such appointment, become a Trustee under such trust deed, vested with the same estates, powers, rights and interests, and charged with the same duties and responsibilities, as if he had been one of the original Trustees named in and who executed the said trust deed; and

WHEREAS, on March 24th, 1883, Lloyd Tevis, one of the Trustees aforesaid, resigned his trust un-

der the said trust deed, and on April 3d, 1883, the said D. O. Mills, as remaining Trustee, nominated Gerrit L. Lansing to fill the vacancy created by the resignation of the said Lloyd Tevis; and on April 17th, 1883, the Board of Directors of the said Company approved the nomination of said Gerrit L. Lansing; and on April 18th, 1883, the said Gerrit L. Lansing duly accepted the said appointment; and

WHEREAS, on February 4th, 1896, the said Gerrit L. Lansing died; and on March 14th, 1896, the said D. O. Mills, as remaining Trustee, nominated Homer S. King to fill the vacancy created by the death of the said Gerrit L. Lansing; and on March 18th, 1896, the Board of Directors of the said Company **[293]** approved the nomination of the said Homer S. King; and on March 21, 1895, the said Homer S. King duly accepted the said appointment; and

WHEREAS, the said trust deed further provided that the Trustees under it shall have the power and authority to act by attorney, to be appointed by them, in making the conveyances in said trust deed provided for; such appointment to be made by letter of attorney, duly acknowledged, and to be recorded in each county within which any of the lands of the said trust deed are situated; and that all deeds made in the names of such Trustees, by their attorney appointed as aforesaid, shall have the same force and effect as if made by the said Trustee in person; and

WHEREAS, on March 28th, 1896, the said D. O. Mills and Homer S. King, Trustees as aforesaid, by letter of attorney duly acknowledged and recorded

as in the said trust deed provided, appointed Jerome Madden their true and lawful attorney, in their names, place and stead to make, execute and deliver all conveyances required of them under and pursuant to the terms of the said trust deed; and

WHEREAS, the said Company has sold the hereinafter described lands upon terms agreed upon by it and the said Trustees to Tulare Oil & Mining Company for the sum of One ($1.00) Dollar, which sum has been fully paid to the said D. O. Mills and Homer S. King, Trustees as aforesaid;

NOW, THEREFORE, in consideration of the premises, and the said sum of One ($1.00) Dollar, the receipt whereof is hereby acknowledged, the parties of the first part do remise, release and quitclaim to the said party of the second part, and to its successors and assigns, all the right, title and interest which they now have, or may hereafter acquire, from the Government of the United States, of, in and to the following described **[294]** tract of land situate, lying and being in the County of Kern and State of California, to-wit:

The fractional South West Quarter (Frac. SW¼) of Section No. Nineteen (19) in Township Thirty (30) South, of Range Twenty-two (22) East, Mount Diablo Base & Meridian, containing one hundred and sixty-one and one-hundredths acres (161.01), according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; reserving all claim of the

United States to said tract as mineral lands. (Internal Revenue Stamp on margin.)

TO HAVE AND TO HOLD the aforesaid premises, to the said party of the second part, its successors and assigns, to its and their use and behoof forever.

IN TESTIMONY WHEREOF, the said Southern Pacific Railroad Company has caused its name to be signed to these presents by its President pro tem and Secretary, and its Corporate Seal to be hereunto affixed; and the said D. O. Mills and Homer S. King, Trustees, by their said attorney, Jerome Madden, have hereunto subscribed their names and affixed their seals the date herein first written.

SOUTHERN PACIFIC RAILROAD COMPANY,

By J. L. Willcutt,
Its Secretary.
[Corporate Seal].

By H. E. Huntington,
Its President pro tem.
D. O. Mills, (Seal),
Homer S. King, (Seal),
Trustees.

Br & K. G. T. F.

By Jerome Madden,
Their Joint Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this 21st day of February, in the year one thousand nine hundred (1900) before me, E. B. Ryan, a Notary Public in and **[295]** for the City and County of San Francisco, State of California, personally appeared H. E. Huntington, known to me to be the President pro tem and J. L. Wilcutt, known to me to

be the Secretary, of the Corporation that executed the within instrument; and each of them acknowledged to me that such Corporation executed the same; also, on this the day aforesaid, before me, the Notary Public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument, as the Attorney-in-fact of D. O. Mills and Homer S. King, and acknowledged to me that he subscribed the names of the said D. O. Mills and Homer S. King thereto as principals, and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the City and County of San Francisco, State of California, on the day and year above written.

[Notarial Seal]. E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: 3248 Quitclaim Deed No. 11980. Southern Pacific Railroad Co., D. O. Mills and Homer S. King, Trustees. To (Tulare, Cal.) Tulare Oil and Mining Co. Quitclaim Deed. Dated February 21st, 1900. Recorded at Request of H. M. Shreve June 7th, 1901, at 45 min. past 8 A. M. in Book 98 of Deeds, Page 134, Kern County Records. Chas. A. Lee, Recorder, By C. S. Meroney, Deputy Recorder. $2.00. Compared.

U. S. Dist. Ct. So. Dist. Cal. Northern Div. United States vs. Southern Pacific Co. et al., No. 221.

Plaintiff's Exhibit Shreve No. 1. Filed April 25th, 1912, Leo Longley, Special Examiner. **[296]**

Witness continuing further, testifies as follows:

I am not a practical mining man or oil expert. I have had some experience in putting some wells down, but I am not an expert. I am acquainted with the oil seepages and showings around the then town of Asphalto, or around what is now known as McKittrick, from personal observation. As a description of their appearance and location, I would say that, in various parts of 30-22, right in the immediate vicinity of McKittrick, there are large showings of liquid asphaltum oozing from the ground, and in many crevices and in the excavations made, in the summer time the asphaltum is in a liquid shape. In recent years there has been a great many of those pits dug for the purpose of catching the asphaltum, which was used at one time for fluxing, in making asphaltum. They had an asphalto plant there at one time. There were such indications in the early days, when I first went into that field. In many places the asphaltum had shown and evaporated on top, that had been at one time liquid asphaltum, the same as in these gulches. A waste of oil was shown quite considerable in previous years. The evidences I saw there have much influenced me in making locations. At that time I did not know about, and had not been in the Elk Hills. I have never been in the Elk Hills in my life, that I know of, and know nothing whatever about them.

CROSS EXAMINATION
OF
H. M. SHREVE.

I cannot tell exactly the date when the Tulare Oil

& Mining Co. was formed. It was the following year after the claims were located, in 1899. I used to run out to McKittrick quite frequently up until 1901, then for twelve years I went over there at different times. The property in the SW¼ of Sec. 19,-30-22 was located, I think, in 1889. I could not give the date of the contest in the land office, concerning Section 19, [297] T. 30, R. 22 without referring to the minute book. I think I can by referring to our mining company's minutes. The minute book shows a resolution authorizing the Board of Directors to proceed in the hearing, I think. After referring to the book the witness said it was prior to 1899. I cannot fix the date. The resolution was passed Nov. 6, 1899, and related to the matter of re-opening the case that had been recently decided adversely to the Tulare Oil & Mining Co. I cannot tell how long before that the protest was filed; I have no recollection except what appears from the book. I don't know whether I had anything personally to do with the filing of the protest or whether the President of the Company did it. I do not, at this time, know what the contents of the protest were. I know, of my own knowledge, that it was filed. I don't think I was present at the contest which was held, I think, in the local land office. I think our Company produced witnesses at that contest. I could not say positively. We were represented by an attorney. After the hearing of that contest a decision was rendered in favor of the Southern Pacific Railroad Co., as to the character of the land. There had been very little development work done

on the SW¼ of 19 prior to 1909. No oil had been discovered on that quarter prior to that date. We had not discovered oil in Section 21. 19 and 21 were involved in that contest. I think the south half of 19. On the SW¼ I think no wells were put down. On the SE¼ of 19 there were wells at that time. I cannot say whether it was the S½ of 19 or merely the SW¼ of 19 that was involved in the contest. After the decision of the land office, our company applied for a re-hearing. No, we didn't apply for a re-hearing; we made arrangements with the Railroad Co. not to re-open the case. In the meantime, we had a well bored on the SW¼ of 19 and found light oil there. We found heavy oil in Section 29. That was not involved in the contest. We had not dis- **[298]** covered light oil in 19 between the time of the hearing and the time we decided to apply for a re-hearing. I cannot state the date when the discovery of oil on the SW¼ of 19 was made. It was made before the execution of the deed. It must have been five months before. Instead of carrying on our application for a re-hearing, we entered into an agreement with the Railroad Co. The Railroad Co., procured its patent to this land and then the deeds were executed. I do not know, as a matter of fact, that Section 19 was not patented until May 22, 1901. I don't know when it was patented.

The SW¼ of Sec. 19 must be about two miles from McKittrick, southwest from the present town of McKittrick. At one time the town was further south than it is now. I cannot say that this section is situated southwest and south of the Elk Hills. I

am not familiar with where the Elk Hills are. This location of ours was not in the Elk Hills, to my knowledge. I was never over the Elk Hills, and know nothing about them. Section 19, pointed out to me on the map marked "Government's Exhibit I," is situated in what is marked on that Exhibit as McKittrick Hills. I don't think I was ever on the sections marked in that Exhibit with red hatch lines in Township 30, R. 23. I would like to say that in the early days, before the Railroad came through, in driving from Bakersfield to McKittrick, it is possible that in going directly west, we went through Elk Hills. I don't remember of doing so. We usually followed the line of least resistance and sought to go through a pass. During all the time I was in there I knew nothing about the Elk Hills. We now own some land in Section 28, a little south and east of McKittrick, but don't own any anywhere near the part described as Elk Hills. The land we own would be in the general range running to the Southeast, towards the Sunset field.

I am not familiar with the mountain range called the [299] Temblor Range. I have been through the mountain range lying to the West and Southwest of McKittrick once or twice, just passed through. We were there for the purpose of locating claims. My first venture was in developing new territory. In later years I was not so interested. I was interested in just the original claims we had located in the early days. We maintained a large number of them. Some we didn't. Some we obtained patents for, and disposed

of same. There was no new territory acquired. I took quite a considerable interest in the oil business in that period. I was interested in any new discovery on those claims, in a general way. I did not keep track of the general development of that oil territory except at McKittrick and in that vicinity. I was familiar generally with what was going on at McKittrick. I can't state that I was familiar with what was going on in the territory surrounding McKittrick. In later years, when so much development was going on, I visited McKittrick, but not as much as in the early part. The other territories were opened up after my interest ceased, to a large extent. My interest ceased, I think, in 1900 or 1901. I was at McKittrick a great deal then, but after that I only went out a few times. I know nothing whatever about the Elk Hills and heard nothing about them. [299½]

REDIRECT EXAMINATION
OF H. M. SHREVE.

By Mr. Mills:

Q. Those hills east of the McKittrick in those days were not known as the Elk Hills?

A. I think not. That is a new name to me.

Q. By Mr. Lewers—You didn't hear anything about that country out there by any name, did you, while you were in there?

A. No sir.

Mr. Lewers.

Before you call the next witness, I desire the record to show that after the witness Jacob Kaerth yester-

day on the stand announced that he was willing to immediately go out into the Elk Hills with a representative of the defendants in this case, and after he left the stand we endeavored to make arrangements with him to go out there and point out the places where he found the ledge of asphaltum, or reefs, and oil seeps in Township 30-23, he having testified that the asphaltum reefs, as he called them, existed in numerous places in that township. That after leaving the stand, in response to our request to go out there and show our representative, he stated at first that he was willing to do so.

Mr. Mills—I want to interpose an objection to this gossip and tittle-tattle. If counsel wants to be on the stand and sworn and give us an opportunity to cross-examine him, we are perfectly willing that he make any statement he wants to. But this idea of testifying into the record from the mere statements of counsel, we shall object to as improper and entirely hearsay.

Mr. Lewers—I understand the reason for the objection. After stating first that he was willing to go, he later informed us after conference with the attorneys for the Government that [300] he declined to go.

Mr. McCormick—We want to put in a further objection and ask that it be considered as made at the time Mr. Mills made the objection that Mr. Kaerth is a witness and testified where he lived, and the process of the court is open to the defendant to subpoena him.

Mr. Lewers—All I know is he was willing to go at first and changed his mind for some reason. [301]

H. P. DOVER, a witness called and sworn on behalf of the plaintiff, testified as follows:

I live at San Pablo, or Richmond. I am 47 years old. I know what is known as the Elk Hills, in Kern County. I have been over those hills, the first time in 1903 or '04, sometime in the spring. There were five of us in the party; my brother, my father and Jack Anderson. I don't recollect the other. We went over to locate oil lands and located several claims. It is hard to say how many. I do not know that any of our Sections were in T. 30-23. We located two sections, I think, 25 and 26. (Witness indicated the township by pointing to the map, but did not testify as to the range and township.) In T. 30-24, there was a kind of blow out in a large gulch that went down through the country, which showed indications of oil on both sides, near the bottom of the gulch—of discolored clay and some sand. It showed a stain of oil, in my opinion. We detected it a little with ether. There was a smell in the rock, or in this clay or sand, but I couldn't pronounce it gas. It was more of a sulphur. I could not tell the extent of that showing in the gulch, it was a couple of hundred yards up the canon. We went up the canon on it.

I know where Buena Vista Lake is at the end of Elk Hills. The stained sand was in the Elk Hills. It was on Sec. 11, about six or eight miles West of the Lake. We had some locations that would be a

mile North and East of that seepage or oil stain—most of them on the slope.

I was in the oil business in the Midway a while. I am in the oil business today. I started in the oil business in 1901. While in that business I had occasion to notice the formation of the land through which we drilled. We did not find quite as much shale in the Elk Hills as in the Midway Field, but the formation, I think, was favorable for oil property. I have **[302]** not had any reason to change my opinion since that date.

The Elk Hills have no value for crop raising or agricultural pursuits that I have ever known of. For farming it was no good. It was rough and dry. Nothing seemed to grow there. In the spring of the year of a wet spring, there might be a little feed for a month or so. The chief value of the Elk Hills is for oil, if for anything.

I know a little group of hills, of more depressed elevation, South of the Elk Hills, called the Buena Vista Hills, on the map before me, which run in a northeasterly and south-westerly direction towards the lake. I have been there. In Sec. 11, T. 32, R. 24, there is a blow out. I judge it to be two or three hundred yards long where it crops out. I saw it in 1910. I made one location on one quarter section. The discovery of the gas blow out in the Buena Vista Hills influenced me in making that location. I am interested in one other Section in the Elk Hills; Section 30, I think, T. 30, R. 24. I think it is near the blow out.

CROSS EXAMINATION OF H. P. DOVER.

I first went into the Elk Hills in 1903 or '04, for the purpose of locating oil lands. I had been in the Hills before. I can't tell when. I worked stock there for Miller & Lux for years. I had been there on numerous occasions before I went in and located these claims. I first became interested in oil locations in 1901, in the Midway, on Sec. 25-32-23. At that time I began active prospecting for oil. We began to put down some wells on leased lands on Section 25, in the Midway. I had no other experience except in the Midway before I went into the Elk Hills and located in 1903. We went into the Elk Hills with a team and camped. We went in from what is Cole's Ridge, south and east of the hills. Didn't go in from Miller & Lux's headquarters at that time. [303] We came to a blow out which showed on both sides of the gully, or canon. I couldn't be positive as to what section that was in. I would say it was about Section 23. I can't tell whether the ground where the blow out was had been located before I went in there in 1903 with my father and brother to make locations, but there was ground all through there that was located at that time. I don't know as a fact how many locations we made on that occasion, but I think three or four sections. I judge it was sometime in May, or maybe later in 1903, when we made those locations. I don't recollect that we made a claim there known as the Crow No. 6. I couldn't be sure

we located a claim in Section 25, Township 30, Range 23, in 1903, I think it was the year after we located in there. I cannot fix the month we went in in 1903, it might have been as early as March, but I would take it to be later; along in May. It was not the first of January; not that first time we were in there. I did locate some land the next year, in January. My brother and cousin had been in there before we made those locations, a cousin of the same name, they were there before I was there. I can't say what time they were there. My cousin's initials were H. J. I knew J. L. Strowbridge. He was associated with my brother in lots of locations there. I knew E. J. Emmons, Charles Duval and J. A. Banfield. I think Emmons was in on some of our locations. Banfield and Duval were put on some other locations besides mine, if they were put on. They were not in there with me at the time we made locations in the Spring of 1903. I don't know whether they were in there before that or after. Strowbridge lived on what is termed, the Island, in Kern Co., and Banfield lived in Bakersfield. I shouldn't call my father a practical oil man. He has been in the oil business a great deal. I won't swear whether I made a location on January 1, 1903. I have no records. [304] I was in there in January one year, but my recollection is the first time I went in there was in May, 1903. My recollection is that I located all of Section 25, but I think Mr. Barlow and Hall and Tom O'Brien and a fellow named Schofield located that when it was located, 25 and 26. We did not do much of anything with the claims located, in

1903, only in Section 30, that we now hold under the oil locations. I think we located three or four, or maybe more. I didn't do anyhing in 1903 except locate and record them. I believe we relocated some of this same ground in January, 1904. I could not say how much. I was not with them at that time. We did nothing with it in 1904.

In the Spring of 1904, I lived in Bakersfield. The Californian, and, I think, the Echo newspapers were published there at that time. I read them both at times. I think I subscribed for the Californian, and saw the other from time to time. I was familiar with both of these papers more or less, in a general way. I don't think I was in Bakersfield during the summer and fall of 1904. I was in San Francisco for about six months, in bed, sick. I think I went into the Hospital the first day of May and came out in August. I didn't return to Bakersfield for two or three months after I came out. I stayed at Richmond. I didn't see many of the Bakersfield papers during that time. Cannot recall to my recollection whether I ever saw them.

I don't think that either I or my associates did anything at all with these claims in the way of development during 1904. If they were re-located on Jan. 1, 1905, I was not in on the locations. They might have been re-located. I, together with W. H. Hill, Tim Sullivan, T. N. Schofield and Thomas W. Brun, located the SW¼ of Section 25, T. 30, R. 23, but I cannot state the time. I located, I think, Sections 25 and

26, at that time, and that was all I ever located in that township. I don't know as I ever re-located them or had anything to do with them. I don't [305] know whether I drew out altogether. I didn't pay any attention to any more locations in there. I located in 24 in the Elk Hills I cannot state when. My cousin went there and located two or three sections, Section 30 amongst them, in T. 30, R. 24. That was a year or so later. They leased Section 30 to the Associated I believe, and they are working on it now. I did not do any work on any of these locations during the year 1905, more than to survey them and mark them out and locate them. No development work was done that year or in 1906 or 1907 that I know of. It seems to me that the land was leased to the Associated in 1908. Neither I nor my associates did any development work in 1908 that I know of. In 1909 they had some men on the ground. I sent money from Frisco to pay the wages of the men to dig gypsum or something; but I never saw the work done, and have not seen that country since. From 1903 to 1909 nothing whatever was done in the way of development work on those claims by me or my associates. I made no discovery of oil in 1903, or after that. They claim that they have got an oil well on Section 30 now. In 1903 or 1904, I did not know of any oil in the Elk Hills. I never saw any oil there, or other mineral; nothing but this blow out, and we located the territory because of it.

Mr. Schofield was connected with oil properties in the Kern River fields and at McKittrick. He was

a man of means. Mr. Sullivan and Mr. O'Brien had means. I guess they could have put money into the development of the property if they so desired. Neither I nor my father had any means. If the Elk Hills were not valuable for oil they would not be valuable for anything, in my opinion.

REDIRECT EXAMINATION
OF H. P. DOVER.

There were four wells put down on Section 25, 32-23. One by the Sunset Co., New Richmond, Occidental Queen and Barton. **[306]** There was a little seepage of oil in Section 23-32-23. I saw it the first time in 1901. A man named Van Meter saw it the first time. It was not like the seepage in 32, in the Elk Hills. There was oil in 32 oozing out of the ground. Some of the old locations we had there were abandoned because of the slump in the oil business in Kern Co., and oil was a kind of drug on the market for two or three years. Nobody would put any money in oil property. I have had some extensive experience in the oil business in the Midway. We claimed that during the time of the slump referred to there was not much profit, even on developed property, in handling oil. Oil was selling very cheap, even in the Kern River fields. Tim Sullivan, Tom O'Brien and Schofield were interested in oil properties besides the locations we made with them in the Elk Hills. I heard Mr. Schofield say there was nothing in the oil business at that time, and he didn' feel like putting money into it.

RE-CROSS EXAMINATION
OF H. P. DOVER.

I don't know whether Schofield said there was probably nothing in the Elk Hills. That was never mentioned, whether there was oil in the Elk Hills or not, as a reason for not developing the claims. It looked to be pretty good territory, and looked promising to all of them. We believed, and thought oil was there, the same as we did in the Midway when we went in there first. We were taking a chance.

We didn't want to put money on the chance when oil was down that cheap. It continued down that cheap for four or five years. I held the ground after oil went up, but not with those people I was first in with. We have a well on Section 30. I didn't put it on. I leased it to people that did put it on. That was over in the next township. I didn't do anything in T. 30, 23. I was in three or four companies from 1903 up to 1906. **[307]** Was pretty heavily interested. Sec. 25-32-23. During that time I did development work on Section 25 and got patent, notwithstanding the depression of the price of oil. I started to work on Section 25 in 1901, just as the slump was going down. We started putting the wells down and went through and finished them. I think that was about all the development work done by the Companies I was interested in. We kept on the work on that Section and got a patent because we believed there was oil there, and knew it after we got it.

COLON F. WHITTIER, a witness called and sworn on behalf of the plaintiff, testified as follows:

My business is producing oil. I am operating in Midway, McKittrick, Oklahoma, Maricopa, on the West Side and in various places. I have had oil holdings near Coalinga. I have four producing wells in McKittrick; nine in Section 6-32-23; two in Sec. 24-31-22. I have others that are not producing. I cannot tell exactly what the total output of my producing wells was during last year, without looking at our books, but it was somewhere near a million barrels. I have been in the oil business a little over fourteen years. I first went to McKittrick in the summer of 1902.

I know what is known as the Elk Hills. They trend Northwest and Southeast. I know where the railroad gap is that comes down through the hills into McKittrick. I cannot say positively that the railroad crosses Section 14. There is indication of an anticline in the Elk Hills. I first saw it in 1902, from the railroad. There is some asphaltum showing in that gap, some oil sands—dry oil. The anticline is sufficiently marked to be seen from the train as it goes through. That anticline runs back through the Elk Hills, towards the Southeast. I know this because the apex of the hills show it. **[308]**

I have examined the shales, or sands, around McKittrick. The shales are practically the same as the shales in the Elk Hills. As to the sand in the Elk Hills, I cannot say that they are like the sand around McKittrick, because I have never seen the sand in the Elk Hills except where the railroad crosses. I have made personal examination of the anticline

where the railroad passes through the Elk Hills. I know generally the formation of the land from McKittrick down towards Sunset. I suppose I have been in McKittrick from 100 to 200 times in the last fourteen years, perhaps more. I know of oil seepages, or oil outcroppings, or sand, on the East flank of the Temblor range, between Sunset and McKittrick. There are quite a number of them back there—there is a large cropping in Section 14-31-21, one in 24-31-21, one in 19-31-22, one in 2-32-22, one in 1-32-22, one in 6-32-23 and several others between that section and Maricopa, but I cannot give the numbers of the sections. I know of asphaltum showings in 30-22, around McKittrick. I have examined it myself. There are some of these outcroppings which are directly back or south of the town of McKittrick, in the fault running from the northwest to the southeast and extending to the southeast, cropping very prominently in sections 34 and 35, in 30-22. I don't know positively of any oil seeps in the Elk Hills. In 31-24 I do. That is in what is called the Buena Vista Hills. I have been in the Buena Vista Hills myself. I found natural indications of oil there. It was a cropping commonly called a blow out, caused evidently by oil coming up through a crevice in the formation. The sand is not showing there. The oil evidently came up through a crevice in the shale—had come to the surface and dried out. It was showing quite prominently and I set it on fire and it burned for some two weeks. I consider the shales and sands on the

Buena Vista Hills about the same as those on the flank of the Temblor range and on the Elk Hills, as [309] far as I have examined them.

In riding to Buena Vista from Bakersfield, I have passed by the eastern end of the Elk Hills. I noticed an anticline running in a northeasterly direction, in 1902. I believe the Elk Hills have value for mineral; for oil. I discovered the seepages I have mentioned along in 1903.

CROSS EXAMINATION OF COLON F. WHITTIER.

I have been actively engaged in the oil business for fourteen years. I have had considerable experience in sinking wells.

I am quite familiar with the country surrounding McKittrick, and have been since 1902. I owned properties only at McKittrick in 1902, in Section 18-30-22. I prospected for oil myself during that period. I examined the country quite considerably. Never made any locations. Prospected to see whether I wanted any locations or not. I intended to make financial arrangements before I did any locating, if I found desirable property I would make arrangements to locate, if nothing else came up to attract my attention otherwise. I am interested in the oil business from a producing standpoint and not from a speculating standpoint. I made no locations in the Elk Hills. I partly made arrangements to do so in T. 30-24, throughout the township. I had talked with some personal friends of mine as to the situation and

intended to go in there and make some locations and do development work and get a patent to the land, but I was unfortunately crippled so that I couldn't go over there then.

I went into the Buena Vista Hills to examine properties for other people in 1902, but not into the Elk Hills. I was in the Elk Hills some four or five times prior to 1905. During these trips I found traces of the anticline I have men- **[310]** tioned. Both slopes of the anticline were revealed in the stratification. The northeast slope is the flatter of the two; it don't dip as steep as the southwest. I didn't find as strong or as frequent indications along the slope towards the southwest as I did on the northeast. The anticline does not slope to the southwest in the southwest portion of the Elk Hills. It does in the northwestern portion, near where the railroad passes through. Where the railroad passes through, I found indications of the southwest flank of the anticline. In the southeast portion it seems to have broken, and the formation on the southwest portion has slipped under. I considered it a true anti-cline. I made sufficient examination to satisfy myself on that point. On the west end I found both flanks revealed. Found no indications of slipping at the west end. I don't think it could have been an overturned syncline. In my judgment it was not. I concluded that the depth at which oil would be found was from 2500 to 3000 feet, and made a report in 1902 to some people in the east, who were operating on the northeastern slope of the Buena Vista Hills.

I don't think there was, in 1902, a general idea amongst practical oil producers that there was any limit as to the depth to which oil could be economically worked.

There was a general impression among oil men that oil could be produced from the depth of 5000 feet, but they were not equipped to go after it to that depth. They were equipped to go after it some 2000 or 2500 feet. 2000 feet at that time was considered as hard territory as 3000 feet today, or, perhaps 3500 feet. Appliances and methods have been improved so that it is now practical to economically sink to a much greater depth than could have been done in 1903 and 1904. I don't want any 4000 feet wells today. Too expensive.

A 200 barrel well drilled to a depth of 4000 feet, in [311] the Elk Hills, could be made to pay, of course, that would depend on the life of the well. The average life of a well in that vicinity would be from ten to fifteen years. There are wells that last longer than ten years, in the vicinity of McKittrick. They don't continue at a uniform production. They gradually go down. There are wells producing in McKittrick today that have been producing considerable over ten years. The average life of a well depends on the particular territory, whether it is a territory that is going to be troubled by water and the oil driven away or whether it is not. Frequently a well strikes a bed of oil sand that is not very large, or more or less dry. That affects the age of a well. Under ordinary con-

ditions, I think a well of 4000 feet ought to produce more than 200 barrels a day to make it profitable. It would depend on the gravity of the oil. It wouldn't pay to drill a 4000 foot well for 45 barrels per day. I wouldn't advise a person to drill that kind of a well. I think it to be a foolish venture in such formations as we have here in California.

REDIRECT EXAMINATION OF COLON F. WHITTIER.

It was the general impression of the oil men of my acquaintance around McKittrick, as early as 1904, that the Elk Hills would become oil bearing—would be proven to be oil bearing. Whether or not they could be made to pay, would be a matter of development. There were a lot of locations there at that time, but I didn't know of any drilling being done there then. At that time the law didn't require our going ahead and drilling. I regarded the oil character of the Elk Hills strong enough to warrant the expenditure of money in an attempt to prove its possibilities as early as 1904; I regarded it as being a good prospective oil field, and I was making arrangements at that time to get money together to locate some land and do the assess- **[312]** ment work which the law required at that time, and get our patent to the land and then await future development. An injury to my knee kept me confined to the house several years and that prevented me from doing that.

The life of a well naturally depends upon the thickness of the oil sands through which it is drilled. A

well with perforations in the casing 800 feet through oil sand would be longer lived than one of 40 feet.

I am acquainted with the life of wells in Kern River. The oldest well that I know out there is thirteen years.

From my observation I would say that the chief value of the Elk Hills is for oil, if for anything.

RE-CROSS EXAMINATION OF COLON F. WHITTIER.

The Elk Hills has not much value for grazing. There is nothing there to keep stock there long. They could not live while they were going across. There has been some sheep around through the country there. I don't know of any use that has been made of it. Never had my attention particularly directed to that. I was looking for oil. I didn't find any in T. 30-23. I regarded that as possible prospective oil territory. I thought oil might be found there; I considered that it justified going ahead and making locations and doing the assessment work and getting patents to the land. After a person had gotten a patent to the land, he could afford, with a lot of them chipping in together, to put in a test well. At that time we were just a little bit at sea as to whether or not a person could hold claims under locations and do development work, and if a person went in and made a discovery by drilling and found oil, they would have all kinds of contests over the title. My idea would be to do our assessment work and get our patent to the ground before we made any attempts to

drill for oil. All the time I had in mind the possibility that [313] we would find oil. We might have to go so deep as to give it up and not get it at all. I thought it was territory that at some time or other a chance might be taken on, and that was as far as I was willing to go.

REDIRECT EXAMINATION OF COLON F. WHITTIER.

From my observation of 30-24 and 30-23 and the Elk Hills generally, the conditions were such in 1904, or up to that time, to justify an ordinarily prudent man in the expenditure of money with the reasonable expectation of developing a paying oil property; so that I would advise at that time people with capital, who could afford to take the chance, to drill there to make a test. I wouldn't advise any person of small means, or even a person of large means, to make a test on a small piece of ground. That is why I advised the people who were operating on the northeast slope of the Buena Vista Hills to abandon their work. I have had no reason to change my opinion as to the oil value of those lands.

RE-CROSS EXAMINATION OF COLON F. WHITTIER.

It is not so much of a gamble now, because it has been proved that it is oil bearing at a great depth, but prior to 1904 I looked on it as a gamble. I would have had that opinion independent of the fact that oil had been discovered over to the West. Knowing the

oil formation of those fields as well as the Midway Fields—it is an oil formation. The gamble was not whether or not there was oil there, but whether it was there in paying quantities. All prospective oil land is not paying oil land and one cannot determine that without actually drilling wells.

REDIRECT EXAMINATION
OF COLON F. WHITTIER. [314]

The Elk Hills was no more a gamble than other oil ventures I was in or started. It was more of a gamble than it would be at those places closer to the croppings. Assuming that there is a cropping in Section 32, of 30-24, I would say that there was no more of a gamble in drilling in lands within two or three miles of that, or in that vicinity, than there was in other lands, not if it was a prominent cropping and showed distinctly the oil coming to the surface. In locating wells I have been influenced by oil seepages in the neighborhood. This was the case with reference to oil seepages in the flank of the Temblor range. I have found dry holes in drilling oil wells. I have found oil where I located wells with reference to seeps in the Temblor Range. I would consider an oil location five or six miles West of that oil seep I found in the east end of the Elk Hills much more of a gamble than one on the cropping on the Buena Vista Hills or the McKittrick Hills, although the outcroppings at McKittrick are very treacherous because the formation is bad, so bad that you can get a well, and 100 feet from that, not anything. Our Shamrock

well was drilled within 100 feet of a well drilled by the original owners, who abandoned the property and considered it no good, and our No. 3 flowed 1700 barrels a day for three years, only 100 feet away. It is because the formation is broken, tipping up edgeways, and faults will frequently prevent oil measures being discovered a short distance from the well. There are no indications of faults of that character in the Elk Hills, it is very much more even. I judge this from the surface. In McKittrick, it is on the surface, it is broken and shows the formation standing straight up and down. In the Elk Hills the formation is not broken so badly, and if the oil was originally there, it is there yet, but in McKittrick that is not so. **[315]**

FRANK BARRETT, a witness called and sworn on behalf of the plaintiff, testified as follows:

I am 67 years old. My present address is Redondo Beach. I have had experience in the oil business practically all my life, in Pennsylvania, West Virginia, Kentucky, Ohio, Texas, California and Indiana.

In California, I first went into the Coalinga field in the Spring of 1895. Was first in the oil business in 1862, as a boy, and since that time have been generally engaged in that business. I brought in the first paying well in the Coalinga field and shipped the first oil that was shipped out of there. I was interested in what was called the Producers and Consumers Oil Co., in Sec. 20-19-15, then the Home Oil Company. They operated in Coalinga. Then I

formed two or three other companies there, but have forgotten the names of them. I was President of two companies that were subsidiary to the Union Oil Co., for two years.

I know where the Elk Hills are situated, in Kern County. I have visited them. I first went there in 1899. I went there in the interest of a gentleman named Hilbish. As near as I can recall now, there was a firm in San Francisco, Baker & Hamilton, either had acquired or were to acquire lands down there, and Hilbish had some connection there and he wanted to go into the oil business and wanted to form a company, and he paid me $100.00 a day and my expenses to go down there. In pursuance of that contract, I went down there in 1899. I rode over the entire township diagonally. I came from McKittrick by rig at that time. I think they then called it Asphaltum. I went through the Elk Hills and came back to the south of the hills, beginning at the East end of the hills, through what is now called Elk Horn Valley, to McKittrick. The general direction of the Elk Hills was Northwest and Southeast. I found **[316]** those oil indications. I found two or three places where there had been seepages, and, of course, you could see twice as big as your hand on the side of the formation, where, perhaps all of the lighter properties had evaporated and you could see it there and scrape it off with your knife. It was not asphaltum; it was oil. Then I took some of the outcroppings home with me, and, from the smell you could just

get a little odor of oil, but when I crushed it at home and applied the chloroform test to it, I got traces of oil out of it. I wouldn't be positive that it was in Section 17, but I think it was, where I found the seepage. One of Miller & Lux's men was with me to pilot me. He told me, I think, it was in 17. It was in T. 30-24, near section 23. From my examination, I believe these lands to be good oil bearing territory.

I knew of asphaltum outcroppings around McKittrick, the oil springs over there, previous to that time. In a measure, my opinion was made up partly from the oil croppings there and the seepages in the McKittrick region, more positively so from the formations I had gone through in the Coalinga field.

I noticed very pronounced indications of anticlines in the Elk Hills. I know where the railroad passes through the gap there. I don't know the sections it is in. I noticed a pronounced anticline there. It was at the Northwest end of the Elk Hills. I think the trend of the anticline was to the Southwest. At the Northwest end of the Hills I would say they would go southeast. I don't think the characteristics of the formation of the Elk Hills are at all dissimilar to the formation around McKittrick, and not dissimilar to that at Taft and Maricopa.

Oil lands in the different fields that I have operated in California are worth about $300.00 to $3,500.00 per acre. I have dealt in oil lands in California myself. Pretty hard **[317]** question to say what Sections 15,

17, 19, 21, 23, 25, 27, 29, 33 and 35, in T. 30-23, in the Elk Hills, were worth. Without any producing wells on them at all, their value would not be measured as high as if there had been producing wells on them, but they ought to have been reasonably worth $200.00 to $300.00 an acre as oil lands. That is what I believe them to be.

As to their value aside from the oil value, I don't think you could raise a black-eyed pea on them. I wouldn't have them to pay taxes on them for agriculture. I don't think they have any value at all for agricultural purposes—for raising crops. As to their value for grazing, I suppose when the winter rains occur, the filaree would grow up there, but it would not last very long, probably not over six weeks or two months, in a very good season.

As to the topography of those lands, the lands immediately adjoining the Elk Hills, in some places it is a little broken. In others the formation seems to be uniform. I think a New England farmer might have made something out of them, but not a California farmer. The absence of water would be a deterioration of the value of the land—it was the California desert climate.

I made a report on the land, and a favorable one, in writing. I recommended the lands as good oil bearing territory, and have had no reason since that to change my opinion.

CROSS EXAMINATION OF FRANK BARRETT.

I gave the report I made to Mr. Hilbish and kept

a copy, which I afterwards sent to him. I was in McKittrick three days at that time and was then on the territory both East and West. I spent only two days in the Elk Hills and then I went to the other, and I saw what I thought satisfied me and I spent an extra day that I didn't charge for to see the other portion. [318] I didn't recommend any particular portion of the Elk Hills. He just asked me to go over T. 30-23 and see if it would be good oil bearing territory. That was the section to which my attention was particularly directed. I think the seepage was found in Section 17. I cannot be positive about that. The man from Miller & Lux's ranch told me it was 17, and, as near as I could measure by my riding, I believe it was. The oil seep was in a gully. I saw it only on one side, down near the bottom of the gully. There was no cabin in sight of the oil seep. It was not in Section 32-30-24. If I was in T. 24 at all, I was simply on the edge of it. I believe it was six or seven miles from Miller & Lux's headquarters. I can't recall how far it was from the ranch. It might have been four miles. I cannot recollect the exact distance. If my memory serves me, it was a little North and West from the ranch. I think we found two or three section corners, not marked. I think one corner was very close to this oil seep. As to whether the territory where I found the oil seep had been surveyed and marked out, I will say that there were section corners there on the North half of that Section. I don't recall whether I saw any on the South Half or

not but I think not. I mean the North Half of the Township. I think there were corners on the North Half of Section 17. I can't be positive of that. I was on the North Half of T. 30-23 and found some section corners there; some on the hills and some on the flat. I had my field glasses with me and we would ride along and this man with me would say we have ridden two or three miles and he would point out "there is a section corner" and we might have passed one. I don't believe I can tell whether he pointed out any section corners after we left the North line. I never expected to hear anything again about it and never charged my memory with it at all. I think we saw section corners before he told me we were in Section 17. I located this **[319]** section and this man told me that we were on it. By riding along I could measure the distance and could tell—by the horse walking and could tell—that we had gone a mile from the last section corner, which was marked. I saw the corners. I don't know who put them there, whether it was the Government or somebody else. I found some three or four seepages where oil had seeped out and caked. All of the lighter properties, of course, had evaporated. I couldn't tell how many were there, but there were three or four. There was one blow out that I saw that was a live seepage with actual oil coming out of it. It was not in the Buena Vista Hills or the McKittrick Hills. It was in the Elk Hills. To the best of my recollection it was in Section 17. I couldn't answer how far from that

indication we saw in Section 17 it was to the nearest other indication. It is hardly possible that these oil seeps that I refer to were in an entirely different township, because I was not in a different township at that time. I was on the edge of 30-24, but I was not in the township.

I observed a very prominent anticline. It was most prominent on the apex of the ridge. I could see both sides of it. I had a very powerful pair of field glasses and could stop my horse and look over the country. The anticline did not, in my opinion, correspond entirely with the apex of the hill. I saw stratification revealed there showing the slopes of the anticline. They dipped Northeast and Southwest. I couldn't tell now at what portion of the Elk Hills I found any dip or stratification to the Southwest. I am certain I saw such a dip, but don't recollect where it was.

In my report I didn't recommend the locations of ground in any specific portion of the Elk Hills. The gentleman who sent me there, told me he wanted me to ride through that township and make a report. I don't know where his lands [320] were or where he was going to get them. That was before there was an excitement at all at Bakersfield. There was a well drilling there on the Kern River. I recommended the entire South Half of the township as good oil bearing territory. Well in fact, I recommended all—odd and even numbered sections, one as well as the other. I don't know whether he ever made any locations. I

know that he formed a company. At the time I was in there, I didn't know of any oil deposit underneath any portion of the Elk Hills. I only knew from surface indications and I believed they were there, but I didn't know they were there. I believed the country might produce oil, and I was examining it with reference to its character as an oil prospect. I knew of no discovery of oil in the township and heard of none. I could not have said "this is known oil territory." I could only have said that, in my opinion, it would prove to be such. My experience extends back pretty nearly to the time the first oil well was sunk in this country. I have seen promising oil territory develop—not oil—but I have seen them throw out what was pretty near as good as oil—gas—plenty of it, that was utilized for manufacturing purposes. I have observed promising indications very frequently that didn't pan out. The oil business is a good deal like elections. I don't think the percentage of failures in the oil business is greater than 50% if it is gone into intelligently and systematically, but, still, at the same time, you can't—well, I will illustrate to you. In one section a well down 3200 feet and no oil; the next section to it, 250 feet, and good producer. A high priced expert couldn't see a bit deeper into the ground than another. The oil doesn't always appear where they say it will. The true expert is the drill. You couldn't say that a territory is known oil ground till you put a drill in it. It is not known till it is proven. I have had experience, on the side,

of lode mining, [321] or placer or gold mining, to my sorrow. I found it a good deal more uncertain than the oil business. I knew more about the oil business. I am not of the opinion that a practical oil driller has just as much chance to tell where oil is as a scientific geologist, because a good practical driller may not know exactly where to locate his well, while a man who understands the formations and the topography of the country, and all that, will locate the well and then he turns it over to the driller. Of course, there are many drillers that are theoretical, as well as practical men, but if you take the average of them I am not certain. I have known numerous instances where scientific men have pointed out where wells should be sunk and those wells have been sunk and nothing produced. That is not at all uncommon.

REDIRECT EXAMINATION OF FRANK BARRET.

I am acquainted with the formation around Asphalto. It is somewhat broken. It is the experience of oil men, where lands have been faulted in an oil formation, that they may find a well on one side of a section line and on the other side no producer whatever. This would be due, in a measure, to the fault in the formation. You take the Coalinga field on the North Half of Section 20, the Producers Oil Co., have operated on the NW¼ and the Home Oil Co., was on the NE¼. The Home Oil Co., had an 800 barrel well. On the South Half a half dozen wells drilled

and no oil. But immediately on the South of the Section, of Section 20, they found oil. It might have been due to a fault in the formation, and it might have been due to a dyke and intrusion. I noticed no indication in the Elk Hills of any faulting or dyke. It was pretty generally uniform. There were some little breaks. The chances are 10 to 1 that there is more chance to find a presence of oil sands where [322] the formation is regular.

As a general rule, I find those geologists conservative, except some that are on the speculative order. I don't think one man could see deeper into the ground than another. Of course, he has to base his calculation on the angle of the dip. I am no geologist. Any experience a man would have in the Eastern fields would not benefit him in this field, because there is as much difference between the formations as there is in the character of the oil. You will find a paraffine base there and the asphalt base here.

RE-CROSS EXAMINATION OF FRANK BARRET.

I believe the formation I saw on the surface of the Elk Hills to be a formation that produces oil. I believe the topography of the country—the outcropping, and the shale—it is the formation in which oil comes. I believed oil was there. Of course, the oil would come from a formation entirely different underneath the overlaying surface formation of the Elk Hills. I was not able to determine from my examination of the surface of the Elk Hills, in what

position the underlying formations were. It would be pretty hard for anybody to do that. I could not, in the least, tell whether they were faulted or not. Could only judge as to that.

REDIRECT EXAMINATION
OF FRANK BARRET.

From the conditions I saw on the surface, I believed the formations to be generally uniform, but a formation is liable to buckle and go right up. [323]

M. T. HUBBARD, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am 64 years old. My present occupation is that of Civil Engineer and Surveyor. I first entered into the business, packing a rod and a bucket of grub, in the Winter of 1864 and '65 in surveying parties on the Central Pacific Railroad. Since that time I have been in the surveying business more than in any other.

I have had experience in surveying lands in California. I have surveyed agricultural lands, oil lands, railroad lands—railroad lines, rather—irrigation ditches. I have surveyed oil lands in Kern County. In the Devils Den Country, the Temblor District, the Belridge District, the McKittrick District, the Elk Hills, Midway, Sunset and Kern.

I have never made a study of oil formations as a business, but it is natural for me to observe indications of oil in an oil bearing territory, and of lead in a lead bearing territory, and silver or gold in their

respective territories. I never examined the Elk Hills particularly as to their formation. I made a survey of the Elk Hills in 1901. Surveyed nearly all of T. 30-23. The South Half of that township lies in the Elk Hills; practically all except the North tier of sections. I was surveying for private parties. A man named Sidert engaged me to make the survey. Previous to that time I had done work for the Surveyor General of California. My contract with Mr. Sidert did not come through the Surveyor General's office.

I surveyed the lines of the location of placer oil claims there. I made a memorandum map of the locations at the time. I have the map with me, which I now produce. This is the map of my work. The locator's name is on each quarter section; and this memorandum is some that I didn't have the names of the [324] locators. I had given them previously to Mr. Sidert. Didn't have them at the time I made this map, and I made a memorandum in pencil so he could fill it in, but I see he never did so. I merely ran the lines and found the corners of each quarter section.

Thereupon the map thus referred to was offered in evidence on behalf of the Government, and marked "Plaintiff's Exhibit M."

The witness continuing, testified as follows:

While making the survey, I noticed that the land was very much broken. I didn't consider that it had any value whatever for agriculture. It was too steep, rocky and rough. That is, it had boulders in it. I don't think a person could find, in the whole town-

ship, 160 acres of land that he could plow. I refer to the part of the township that I was over and made the locations on. My survey was in that part of the township which was in the hills. I found no water there and very scant vegetation. Filaree, a kind of grass that grows around the hills there, and foxtail, is the principal grass that comes up. I saw no brush there to amount to anything. A few little bushes. I know of asphaltum deposits, or oil seepages, in 30-22, near McKittrick, in the township to the West of the township I surveyed. I never measured them to get their yardage, but they are very extensive. I have noticed other evidences of oil or asphaltum on the eastern flank of the Temblor Range, in a westerly direction from McKittrick. At that time there were oil wells around McKittrick. There were no oil wells at that time along the eastern flank of that formation, from McKittrick in a southwesterly direction towards Sunset. They had just commenced boring for oil in the Sunset District. I didn't see any oil wells North of McKittrick very far. They were in the immediate vicinity of McKittrick. **[325]**

I noticed evidences of an anticline from McKittrick North, clear up to the Temblor District, there are evidences of an anticline all the way into the hills. That anticline, I should judge, would strike into the Buena Vista Hills. Since then there has been an anticline found to the East of McKittrick that would strike through the Elk Hills.

I noticed, at the time I was at McKittrick, a gap

in Section 14-30-22, where the railroad goes through. I saw that in driving over it. There is evidence of a pronounced anticline running over the Elk Hills. The reason I say it is pronounced, in driving over it, parties that I was with called my attention to it at the time, and I didn't get out to examine it. I never examined it for the purpose of finding out which way the apex of that anticline, or its axis, trended. I didn't visit the Buena Vista Hills at that time.

In the manner that I came in there, and what I saw from the road, and that afternoon I went up into the oil wells from McKittrick, and I thought they went across into the Elk Hills, but it was just an opinion from looking along the croppings of the anticline. I formed only a superficial opinion as to the oil bearing nature of the country there. I thought there was a very good probability of the lands in 30-23, which I surveyed, proving to be oil land. I have not changed that opinion. I have been more confirmed in my opinion now, from observations that I have seen in that district and others to the North and South of it. If it has no value for oil, I don't think it is worth anything.

CROSS EXAMINATION OF M. T. HUBBARD.

I don't know whether it has any value for oil or not. If it has not, it has no value whatever. I wouldn't pay 1-10 [**326**] part of the taxes for the whole of it. If I owned it and had been foolish enough to give the Government $1.25 an acre, I would try to get some-

thing out of it; and if a poor Dago came along and offered me 5 or 10 cents an acre for it, I think he would get soaked, and I would take the benefit of it. I have not noticed that some Dagos have grown rich in the Elk Hills. I have never seen any there only Miller & Lux's Dagos. If they got rich it was outside of the Elk Hills.

I got the names on the maps from Mr. Sidert. I could not tell where he got them. He gave me the location notices and I found the corner stakes, and myself and another man put up stakes 15 or 20 feet inside of the sections, and built a mound of earth and put the stakes into it and posted those notices with the names on. I didn't make the locations, I was merely the instrument in finding the stakes, and the man that was with me built the mounds and stakes and put the location notices on them. I saw two of the men whose names appear on that map on that ground. There might have been more, but that was all I saw. I don't know anything about any of the persons named on the map outside of the two I have mentioned, ever being on the ground. I don't know whether they did any work there or not. I couldn't say whether they did any development work or not. All this map stands for is a list showing all the names that I and the other man put on the location notices of that ground. I didn't look for discoveries of mineral. Didn't try to find any. I didn't know of a single discovery of mineral of any kind or form made on these locations. I didn't see any.

I didn't look to see asphaltum reefs. I was looking for section stakes. The surface of the country was very rough and rugged. I examined it as I ordinarily do in going over a country. I didn't look for any oil seep. I didn't make the locations. I don't know whether the locations were made in [327] Bakersfield or elsewhere off of the township or anything about it.

REDIRECT EXAMINATION
OF M. T. HUBBARD.

It is not customary for surveyors employed as I was to make locations for themselves or their own benefit. If it had been entirely proper at that time to do so, I undoubtedly would have made locations for myself.

N. C. FARNUM, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am 57 years old. My family live in Oakland, but a good deal of the time I live in Bakersfield. Not all the time. I have made Kern County, California, my residence or headquarters for about thirteen years. My business interests are largely located in that County. I have been engaged in buying and selling lands and in contracting, and the manufacture of brick. My business has been mostly connected with oil lands. In July, 1899, I became interested in oil lands in Kern River field, through purchase from the Railroad and other owners and also by locations. In the same year I purchased some lands North of Mc-

Kittrick and located a large tract of land to the East of McKittrick. Also, in that year and the following, I purchased some railroad land to the Southeast of McKittrick. I have been generally in that business since that time. Almost continuously. We have oil property in 28-28, have land in 30-22 and 28-20, and are interested in some oil companies along the West side, by the reason of owning some of their stock. They are the Straud Oil Co., the Sunset Security. I believe that is all that I recollect now. Those companies are engaged **[328]** in the oil business in Kern County. We have 26 wells on Section 21-28-28, Kern River Field; we are drilling a well on Section 36-30-22; we have 80 acres in the Belridge district in 28-20; 80 acres in 15-28-22; 160 acres in 11; 80 acres in 4, and ½ interest in 20 acres in 17-28-28 and 320 acres in 11 No. 20 W., S. B. M.

I am acquainted with Mr. Blodgett, who was on the stand during the past week, and the associates he mentioned as having made locations in the Elk Hills. I knew them all. I knew a man named Silas Duee (Drouillard).

I first became interested in what is known as the Elk Hills in Kern Co., in December 1899. That was the North group of Hills, just East of McKittrick. There are two groups of hills East of McKittrick. The Elk Hills are the more northerly. They lie in a district East of McKittrick extending to Buena Vista Lake. I was in the Elk Hills in 1899. First went there with Thomas Brown, who was superin-

tendent for Miller & Lux and was located at their headquarters' ranch just north of the Elk Hills. The reason for my going there was that I had discussed that country with Mr. Brown, knowing that he was thoroughly familiar with it, this first conversation taking place in Bakersfield, and he requested me to go out with him to the ranch and we would get horses and ride over the hills together, and make an examination of them. That was after the Kern River excitement. The first well in Kern River was brought in in May, 1899, and this occurred in November, 1899.

I made a detailed examination of the Elk Hills at that time; we rode over them pretty thoroughly. We went over the whole hills. At that time we did not know what township they were in, but we visited nearly every section of it, I suppose, at that time—we were over nearly every section. We made a very thorough investigation, looking for oil sands that might [329] crop out, or gypsum—anything in the way of a material upon which we could base a location, with a view of taking the land up, under the placer act.

I went to a place indicated by Brown, where I found what is termed, brea, which is material that oil has been in there once, but has dried out—evidence enough to me that there had sometime been some oil in this piece of ground, on the surface. That was in a canon, it extended quite a distance down the canon from what is often termed a "blow out" or gas fissure—probably was a gas fissure; and to the

North of it the anticline is exposed, and to the South of it, this gas blow out.

The slopes of the anticline were very perceptible on both sides. One dipped to the Northeast and the other to the Southwest. I afterwards determined the location of the oil sand I have mentioned to be in Section 32-30-24. During the examination I made with Brown, I didn't find any other indications of the existence of oil at any time in those hills, other than those I have mentioned. We found to the Northeast of this sand in 32, evidence of an anticline, from the fact that the land was somewhat different, in a direct course running Northwest and Southeast. This land was mineralized by gypsum and fuller's-earth.

The anticline appears to follow the ridge of the country, the backbone, from the Southeast to the Northwest, leading up to and connecting onto the hills immediately North of McKittrick.

I am very well acquainted with the gap the railroad comes through to McKittrick. It is in 14-30-22. There is a well defined anticline there. I didn't discern both slopes of the anticline there. You could see the northern slope of it. There is evidence of waste oil there; dry oil in the sand there. **[330]**

The sand at the oil seepage in 32-30-24 had been saturated with oil. I tested it.

I have been on a great many visits to the Elk Hills besides the one I have referred to. I was there three times before Dec. 12, 1904. I made examinations during those different visits on each occasion. I went

there for that purpose. We proposed to locate them before the first of January, 1900. I took other means of satisfying myself about the hills aside from my own personal examination. At the conclusion of my examination, in 1899, I was satisfied that there was a fair chance of getting oil there.

I was all over T. 30-23, in the hills and on the flat I think I went over every one of Sections 15, 17, 19, 21, 23, 25, 27, 29, 33 and 35, of 30-23. The opinion I have mentioned as to the oil character of the lands in the Elk Hills included the lands of these sections, and, also the even numbered sections between those odd numbered sections I have described.

In addition to my own examination, I had the opinion of William Youle as to the character of the lands. He was Superintendent for Jewett and Blodgett in the oil business on the West side of Kern County, and was regarded as a mining and oil expert, and I so regarded him. He had charge of all the holdings of Jewett and Blodgett on the West side; a great many sections of land that they had leased from different parties, covering a good many thousand acres. At that time they were the most extensively engaged parties in Kern County in mining and developing lands for oil.

Mr. Youle made an examination of the lands in the Elk Hills at the request of Solomon Jewett, Mr. Blodgett and myself. They were interested with me in my enterprise in the Elk Hills. This was preliminary to proposed locations under the placer act. Mr.

Youle's report was made to us verbally in Bakersfield. He made [331] a very favorable report to us —stated that there had undoubtedly been oil in this canon, on Section 32-30-24, and that the country between there and Section 14, in 30-22, where the anticline is exposed by the action of the water, had the appearance to him of oil land, and, having the indications at the Southeast and the one on the Northwest led him to believe that there was an opportunity to develop oil there on the ground.

I am acquainted, from my examination and personal observation with the character of the formation in and about the West side field where oil has been proven to exist. There had been development of oil along the eastern flank of the Temblor Range from North of McKittrick two or three miles to the Sunset field; a well defined anticline to the West of McKittrick, extending for four or five miles from Section 27-30-22, to up through Section 10-30-21. At the time I thought the Elk Hills was a spur from the Temblor Range. I have heard it variously discussed by people who claim to be geologists, that it was such a spur, and I have heard that controverted by others who were supposed to be equally well informed, who claimed that it was an anticline laying forward or superimposed on the McKittrick anticline. At that time the development of oil in the McKittrick and Sunset fields and the land intervening along the flank of the Temblor Range was in the hills. The furthest well to the Northwest at that time was a well of the

U. S. Oil Co., on Section 6-30-22, to the Northwest of this seepage on Section 32-30-24.

The examination I had with Mr. Brown, the oil sand I have described as having been found in the formations I have mentioned, the strike of the anticline, the development of the hills on the eastern flank of the Temblor Range and the general character of the uplift in the Elk Hills, had an influence in fixing my opinion as to the oil character of the Elk Hills. **[332]** That was what first attracted my attention to the Elk Hills—its proximinty to McKittrick, laying in the position they did to the McKittrick anticline. I formed the opinion absolutely that the territory in the Elk Hills was oil territory at that time. I have had no reason to change that opinion since, and still believe it to be oil territory. The fact that operations were confined to the hills rather than to the flats, called the attention of oil men to the possible character of the Elk Hills, in 1899. The universal custom outside of the Kern River field was to drill as near to the anticline or the foot of the hill as you could set a derrick. Most every one was afraid to go out in the flat from the fact that we had all been told, and believed, that the oil might be from 5000 to 10,000 feet below the surface. There was no development in the Elk Hills in 1899. Since that time there has been development; several of them. There is a well on Section 30, of 30-24 and a well on Section 26, of 30-23.

There was oil excitement all over Kern County in

1899 and 1900. I recollect the excitement very well. It began immediately after the discovery of oil in the Kern River field, which was, as I recollect, in May, 1899.

I know that the Southern Pacific Railroad Co., was at that time having its lands examined and segregated by an oil expert for the purpose of withdrawing the land from the market. I talked with Mr. J. B. Treadwell on several occasions, during the years 1900 and 1901, in regard to purchasing oil lands from the Company. He had charge of the Southern Pacific oil development in Kern County. That included lands which fell to the railroad by the grant of July 27, 1866. Mr. Treadwell was general superintendent of oil matters for the Company down there. He drew checks for the payment of bills, ordered work done and material bought, and he told me that he reported very strongly **[333]** to the Railroad Company against the selling of any of their lands, and that if he had been in the position, or on the ground, we would, none of us, ever bought any of the oil lands from the Railroad Company.

At the time of the oil excitement, the Railroad had disposed of all its lands in T. 28-28, with the exception of, I think, some in 3, where Mr. Treadwell had his oil camp and was drilling. After that we could buy no more land; it was all sold in that field. Then we commenced to look over the balance of the local oil field in Kern County to get other land from the Railroad Co., at the price of $2.50 an acre that we paid

for the land in the Kern River field, where we bought about four sections, I think; and we turned our attention to the land around McKittrick as the next most likely place. We looked the country over from McKittrick Southeast to Sunset; made application for four or five sections at that time. Two of them we were able to purchase; the balance of it the Company declined to sell. We did the business with Mr. Jerome Madden, land agent for the Southern Pacific Railroad Co. He said that the lands were withdrawn from sale by orders from New York.

On the strength of the report I have mentioned as coming from Mr. Youle and on my own personal observations, we made locations in the Elk Hills. We located all of the land in T. 30-23, 30-24, 31-23, 31-24, that was not patented at that time, both odd and even sections. We spent money in making those locations and in attempting to perfect them. We discovered on investigation at the Visalia Land Office, that much land in all four of these townships was unserveyed. We immediately took steps to have the land surveyed that we might locate it properly, by setting stakes in each corner and center stake in each section, mounding the land at the corners and placing location notices on each 160 acres. To my recollection [334] about 42 sections were included in the 100 locations we made. We purchased locations in 30-23 from Drouillard and his associates. When we started to locate the land in T. 30-23, we discovered upon portions of sections 15, 23, 24, 25 and 26, locations that had been placed there about one month previous to the time we started to locate.

M. S. Wagy, Si Drouillard, Tom Baker, Jeff Packard, Roy Wagy and Charles Lamont were the locators of the land I have just described. I am not positive what we paid for M. S. Wagy's interest in those lands. I know we paid quite a sum of money; but we didn't buy the interest of all of these locators. Mr. Baker's, Mr. Lamont's and Jeff Packard's interests were transferred to the Wagont Oil Co., and represented by a certain amount of stock. The other locators, the two Drouillards wanted to go to northern Nevada to mine. We paid them cash for their land. We also paid the two Wagy boys. My idea is that we paid out about $3,200.00 to those four locators. I am not positive in regard to that.

We kept up the locations we made until 1906. We built some roads through the country, as it was necessary to get into our camp and cut over the land, which was very rough, and had men dig holes, which at that time was considered doing assessment work. That was the universal practice in Kern County. The annual assessment work consisted of building roads, digging holes, six, eight, feet deep, six by eight or ten feet square. That was considered work enough to hold 160 acres. We established a camp there, and maintained, at all times, at least one man there, sometimes as high as a dozen. We had to keep their camp supplied. Where we had this camp it consisted of a one-room house about fourteen feet square, and a stable about the same size, as we had to haul our water into the hills for the animals we had there, for the men, all our feed and the provisions. We had to have a road

that we could get a wagon [335] over. At the termination of two years, our land having been recorded on the first of January, 1900, we re-located in 1902 and 1904. It was sufficient to have men—considered sufficient to hold the land at that time. We followed the custom. I have been told custom makes law—but I don't know whether it does or not. So we followed the law the other fellows did; and none stopped us. And, as a general rule, most everyone respected the other fellows' locations.

When we first began those locations we had surveyors in there. About twenty or twenty-five men—perhaps thirty. I have forgotten how many. I know there was a big lot of them. We wanted to make them in a hurry, because there were several trying to do the same thing; and, as a general proposition, we got ours on first. We saw to that. Our object in making these locations was to acquire land for development, as we sincerely anticipated doing. We made arrangements to carry out our purpose in actually drilling for oil. We had a drilling outfit, derrick and complete outfit on Sec. 24, T. 28-28, in the Kern River field, where we had been unable to find oil and got water, and we had instructed Mr. Youle to move that rig from Kern River into the Elk Hills to prepare for drilling. That was the purpose of all my associates. That was the universal wish of the company. We were prevented from bringing the rig over from the Kern River field because the Government had at that time just withdrawn, or about that time, had withdrawn, this land.

In 1902 there was a very perceptible depression in oil. There was a great shortage of cars. In 1900, '01, '02, '03 and a portion of '04, I was engaged in the manufacture of brick, as among my other occupations, and was quite a heavy user of oil as we burned our brick with oil. In that period of time I manufactured and sold twenty-five million of brick in Bakersfield, and we frequently had great trouble in getting oil [336] into the yard in time to save our kilns. I, on several occasions, went to Mr. Burkhalter personally and stated the facts to him and he very kindly ordered S. P. cars that were loaded with oil set out on our spur that we might use it, I sending the cars back to the Kern River field and having them loaded with oil for the Southern Pacific account and paying for the oil in that way. This occurred during all those years, and very frequently. It made it very difficult for us, even as the Company was with us, to keep our plant supplied with oil. The lack of Railroad transportation and facilities had something to do with the general depression of the oil business.

I had a great many people who were interested in oil properties look over our lands in the Elk Hills, during the years 1900, 1902 and 1903. Among them a man named Bartlett, from Boston, who was then interested in drilling some wells in the Sunset fields on Section 2. I have forgotten the name of his Company. He came to me in Bakersfield and expressed a wish to lease some of the Wagont Oil Company's lands. We drew up a lease that was satisfactory to both parties. He stated he had a number of friends

in Boston with means sufficient to drill wells and they were anxious to and would lease this land and drill it. I don't remember who he had as an expert. He had an expert with him who made an examination of the lands I have described in the Elk Hills, including our holdings in 30-23. Mr. Bartlett stated to me that the agreement to lease those lands was based on the report made by that expert. The arrangements were not consummated and they did not start drilling on those lands when they discovered that the lands were withdrawn by the United States Government; they discontinued to spend any money there. He was one of several who tried to interest themselves in the same land, in the same way, and with the same result.

I know Mr. Hilbish, spoken of by Captain Frank Barrett **[337]** on the witness stand the other day. I considered him no oil man. In 1900 he owned Sections 11 and 12 in 29-21, North of McKittrick. They were out on the flat about four miles North of the range extending through townships 30-24, 30-23, and 30-22, along this Elk Hills anticline. We didn't consider them oil lands. We thought when they started to drill there that they were—had more money than they knew what to do with.

Mr. Hilbish was interested in the oil business. He owned that land and was the largest stockholder of the Co., but unfortunately for them, when they got their well down some seven or eight hundred feet, their treasurer ran away with $10,000.00 of their money

and they stopped work, and, as the condition of the oil market was then very low and they were then seven, eight miles away from the nearest transportation, they didn't do anything more with the land. Mr. Hilbish went to the Philippine Islands, and died there. His land was sold for taxes in 1905, I think, for a nominal sum, to George Hay, a man by the name of Eyrod and a man named Jordan. About one month ago one of the members of the Esperanza Oil Company bought a portion of that land and paid him $350.00 an acre for it. It was good grazing land. They are drilling an oil well there now. He purchased it for oil.

I made an attempt to purchase lands from the Southern Pacific Railroad Company—I think, in the winter of 1900 or in the early part of 1901. Mr. Madden declined to sell the land. That was Section 25, of 30-22. He stated that the land had been withdrawn from sale, under orders of the Southern Pacific expert or his subordinates. We had purchased the locations in 26-30-22 from a man by the name of Hotchkiss and N. P. Chipman, paying them $1,000.00 for their locations, and we immediately took possession of the land, fenced it, put up four derricks and spent several thousand dollars there. After our [338] hard times in the oil company, we let the land lay idle, but kept a man in possession all the time, paid our taxes on the improvements we had on the land, and in 1899 started drilling and now have a well down about 2500 feet. We were desirous of having this patented land lying to the West of us, adjoining us, to give value to our

located land. At that time we desired to put it in the Company and sell stock enough to drill the land up.

I met J. Owen, who has been characterized here by some of the witnesses as an oil expert for the Southern Pacific Railroad Company. I was introduced to him in Bakersfield about the beginning of 1903, by my son, who had known him some time; and after I had been introduced to him in Bakersfield we talked a little while and I said to him: "Mr. Owen, I presume I have you to thank for the loss of the land in Section 27 in 30-22," which we had located and formed the Washington Oil Company, in the early part of December. We located that land in December, 1899. We fenced the land with a two wire fence, and put three derricks up—one derrick on the NW¼, one on the NE¼ and one on the SE¼. The SW¼ and SW¼ of the NW¼ was patented to the Southern Pacific. The balance of the section, according to the records of the Visalia Land Office, at that time, were government lands subject to location. We so located, fenced it as I have stated, put up the derricks, and within a short time a gentleman by the name of Rial, from San Diego, who is an attorney there, came to Bakersfield looking for location of land on which to drill wells for a company that was formed there. We made him a lease on this Section 27. He started drilling and drilled a well to the depth of about 800 feet, at which time he, as well as ourselves, were notified that the land had recently been patented to the Southern Pacific Railroad and we were requested to leave.

After I had accused Mr. Owen of being instrumental in taking this land away [339] from us, he stated that Mr. Treadwell was responsible for that, as it transpired as he came into that field.

We discussed the country around McKittrick. We were then at work on 26, and I asked him, he had the reputation of being a geologist, what he considered the prospect of our getting oil in 26-30-22, and he said: "Your section 26 is better land for development than 27," according to his opinion. He stated he thought the whole country from 30-22 clear to the lake was oil territory; as he had examined them carefully. That would include Townships 30-22, 30-23 and 30-24. That was in the year 1903, I think, in the Spring.

I have dealt somewhat in oil lands in the McKittrick field and in the fields adjacent. I have been on every Section of 30-23, I think. If I had a patent to the odd numbered sections in 30-23, which I have described, the land would be worth, at a conservative estimate from $100.00 to $150.00 an acre.

CROSS EXAMINATION N. C. FARNUM

T. 30-23 has a value as oil land and nothing else, oil or gypsum or fuller's-earth. It has some gypsum. We never sold any gypsum. We tried to sell some we dug off of 36-30-22 but never off of 36-30-23. We never tried to sell any fuller's-earth.

Patented land in the vicinity of McKittrick is worth a good deal more than from $100.00 to $150.00 an acre if there is any oil well on it. Most of the sec-

tions over there that are patented belong to the railroad, now, where there is any oil in them, and you can't buy them. Oil land in the vicinity of McKittrick is worth from $150.00 to $1500.00 an acre. Some of it more than that. I mean, now, without an oil well on it. Land close up to the outcropping is necessarily worth very much more than that some distance from it, and was so regarded in **[340]** 1900; by reason of transportation.

If you have to haul oil in a wagon or oil tank fifteen or twenty miles, as many of them have to do, it does not pay very well to drill wells. If you have a pipe line at your door, as we have now through most of the fields, or have a railroad that is easily accessible, where you can build a short pipe line of your own, it is a different question,—it makes the oil business profitable; otherwise not. The existence of a well on Section 26-30-23 in the Elk Hills, and also wells in Section 30-30-24 and Section 24-30-23, has its effect upon the value I have placed on the lands. I am figuring the values in the light of the fact that it has been demonstrated beyond doubt that there is oil under the ground. At the time we located it it had not been demonstrated, but we did expect to demonstrate it. I paid $15.00 an acre in 1904 for lands located further away from any known well than the land in the Elk Hills is. I bought two sections in 28-30, paying $15.00 an acre. There was not an oil well, at that time, nearer than 6-30-22.

In December, 1904, I would gladly have paid

$100.00 an acre for a section of patented land, either 23, 24, 25, 26, 27, or 15 or 17. If I was not going to develop it for oil I would not want the land at all. I would gladly have paid that for experimental work. At that time it had no value as actual oil territory.

I didn't, at that time, know it contained oil. We knew then that we had a seepage to the Southeast of us, the oil well on Section 6, to the Northwest of us, with a continuous line through, showing—and, along this line, fuller's-earth and gypsum, the changed condition of the ground showing, indicating beyond a question in my mind an anticline or uplift. Therefore, we were willing to and would have drilled on one of these sections I have just spoken of that we bought from these locators had the **[341]** Government not withdrawn the land from us and made it impossible for us to know whether we would ever get a title if we got a well. I know my associates did not, at that time, regard the land as merely a prospect; we considered it better than a prospect. We spent a good deal of money there, and a man don't usually spend a great deal of money on a prospect. We were assured in our own minds as well as we possibly could be without drilling, that it was an oil territory; and I still consider it as such. And, not only that; the drill has proven since that our theory was correct. I don't know whether we would have gone ahead at that time had we known that we had to go to a depth of 4000 feet to get oil. I doubt if we would have gone 4000 feet at that time. I knew of no well in this country 4000 feet

at that time. There was one in the McKittrick field that was somewhere between 2000 and 2200 feet, and we thought that a wonderful well—a very successful driller—a man that was able to get a hole down that far, in that country. Therefore, if we could have bought patented land along there, we would not have located the other land, but there was no patented land we could get where we wanted it. The railroad had patented land along the North part of the township—I think 1, 3, 5, 7, 9, 11, and possibly 13. I had the records searched at Visalia, and the map showing all the patented land in those four townships, and we made our locations through the township according to the records that we found there. If we had had choice of all the land and known that in order to find oil, we would have had to go over 3000 feet, possibly 4000, I think we would have taken the land and trusted to luck. As to whether land, under the conditions then existing, could have been economically drilled I will say that it would have been an expensive proposition. We recognized that fact, but we were willing to start one well in there and put it down just as far as it could be put down. That [342] was our firm determination—to drill a hole there, to start with big casing and drill a hole as far as it could be carried to test that territory for oil. We didn't expect to go 4000 feet deep. If we had known positively before hand that we would have had to go that depth, we would have started a well, for this fact—if somebody else could put a well down 4000 feet and demonstrate the possibility and advisability of it

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as an oil proposition, we would have followed their footsteps. I don't think there was a well that deep in California. There was one back in Pennsylvania about 5000 feet, but it was a very expensive well.

Knowing all the conditions then existing, we would have sunk a well for the reason that we had determined to drill a hole in the Elk Hills no matter what it cost us, as far as we could go and as far as money would go. That was the absolute determination, not to be deviated from, until the Government withdrew the land.

We held the claims until 1906. The Government withdrawal was removed in 1904, I think. We didn't go ahead after the withdrawal was removed. The conditions changed very materially from 1901 and 1902 as you come down to 1906. Money was hard to get. The price of oil was so low it did not pay to produce it. The transportation conditions were inadequate. Neither of the railroad companies were in a position, evidently—if they were they did not evidence it—to furnish cars to transport the oil to market. These conditions, so different from what they were in 1900 and 1901, put a different phase on the proposition of spending $40,000 or $50,000. It was easier to get cars in 1900 than in later year. It seemed that the injection of the Associated Oil Co., into the oil proposition in Cal., affected the transportation business materially, as they were buyers of oil as well as shippers. **[343]**

It is not a fact that the transportation facilities, both on railroads and by pipe lines, improved from

year to year, as far as obtaining cars is concerned. We saw new cars every year; we knew they were increasing their rolling stock, we knew that there were new pipe lines being built; but notwithstanding that, there was a long period there when it was almost impossible for a man who was not connected with the Associated Oil Co., or some of the other—one or two —of the larger corporations, to get cars to handle his oil. That was one of the reasons why our company determined not to sink a well after the Government removed its restriction. Another reason was a lack of money.

When we determined in 1899 or 1900 to sink this well, we expected to derive a profit from it. We didn't know that it would be necessary to go 4000 feet and were absolutely considering the profit end of the venture. I don't know that I ever heard it discussed as to whether it would be a profitable or even possible venture to sink a well in that country over 2500 feet deep, but I have no recollection of it having been done at that time. But we had positively determined to sink a well there as deep as we could go. We expected to go at least 2000 feet. We were fully convinced of that. I don't recollect whether we expected to go any further than that or not. I know that we considered the territory at least 2000 ft. territory and were prepared to drill a well there notwithstanding that. We considered it about 2000 ft. territory. We had a good many opinions expressed on it by men who pretended to be able to express an

opinion, and from these opinions, we considered it about 2000 ft. territory. Our determination to sink a well was based on the best information and advice available at that time.

We located all the land we had in four townships. At least 42 sections. We didn't make a discovery of oil on any of [344] them. We didn't know that any of them actually contained oil and we made the locations for the purpose of prospecting and developing that country for oil. That was why we took up the ground for oil.

In addition to posting location notices, having surveys, and constructing roads and a few buildings, we dug some holes along these places where gypsum was exposed, and fuller's-earth. Wherever we found the sand that we thought might indicate something we had some work done on it. These holes were dug for annual assessment work, for the purpose of holding the ground as an oil prospect, with a view to seeing what we could discover while we were doing it. We had to do the work somewhere on the quarter section and we preferably did it where we thought it might indicate something to us. It did indicate that we had some fuller's-earth and gypsum. It didn't develop any oil. We did not make any effort to market the fuller's-earth or gypsum. We were interested in the territory purely from the standpoint of its oil and mineral possibilities. We did not try to market the fuller's-earth and gypsum because we could not do so profitably.

As to the indications that induced us to locate that territory in 30-23, I will say: The fact that at the southeastern extremity of the land in 30-24, Section 32, was what we have termed a gas blow-out, with an anticline and a syncline showing in the canyon, the material surrounding the gas blow-out proving by a very simple test to determine oil assured us that there had been oil in that portion of the land at some time. On the northwestern extremity of that anticline, in 30-22, Section 6, the U. S. Oil Company had a well producing oil in sufficient quantities to make it valuable; and the McKittrick Oil Company immediately to the West of them, having a well which at one time produced as much as 200 barrels per day of 24 hours, [345] assured us that in the intermediate territory between these two indications that we discovered there, in all probability was an oil-bearing zone. That was the reason we made the locations. We made them as a result of oil indications over in township 30-24, and in Section 32, and Section 36, 30-22.

These indications we had discussed with men who were geologists, men who were experienced oil operators; and I have no recollection now of any men who went into that country, saw these two points that I have described, but what he was satisfied that in the intermediate territory between them was an oil-bearing zone, and the sands as a usual thing are continuous sands—there is no disturbance to show they have been rolled, turned over and gone the other way—and for that reason, our own conclusions and the advice

we had got from men who were more expert than we were that in all probability it was an oil country, we went to work in it.

We would not have located the territory merely for the fuller's-earth or the gypsum.

I went over 30-23 very thoroughly, and have no recollection of finding any oil seep in that township. The anticline that shows in 14 in 30-22 in the canyon where the railroad passes through in going from Lokern to McKittrick, my recollection is—my best recollection—that as we follow that anticline as far as it showed there is a seepage of oil. Now, whether it is on 14 or the next section, 13, I am unable to say. That was in the township immediately West of 30-23.

I have no recollection of asphaltum reefs in 30-23. I have seen sandstone, what is usually termed a cap rock, that was discolored. Whether this discoloration occurred from oil that had been in it or not, I never made an investigation. I saw that cap rock, I think in 27 and 33, according to my recollection of it now, in the South portion of Township 30-23. I don't **[346]** recollect seeing any asphalt anywhere in that township.

As to the evidence of an anticline in Section 14 in 30-22 near the railroad, which I have mentioned, it was my recollection that I didn't find more than one flank or slope of it. I found both slopes of the anticline well defined in 32, 30-24, in the gulch where the blow-out occurred. The one on the northern portion of the canyon North of the gas blow-out had a slight

dip, perhaps ten degrees, to the Northeast. The one to the South of the blow-out has a corresponding dip to the Southwest. The angles were quite uniform. I have no recollection now as to the extent to which the anticline to the Southwest was revealed. We concluded that it was a true anticline and a syncline.

I discovered anticlines in the Elk Hills, one in 32, 30-24, and one in 14, 30-22, which were undoubtedly the same anticline.

In May, 1899, a man named Elwood discovered oil on the banks of the Kern River in 20-28, about fifty miles from the Elk Hills, and the immediate effect of that discovery was that people who had never thought of oil even, saw an opportunity probably to become suddenly rich, and were anxious to acquire land anywhere there was a possibility of getting oil, and they made locations in 28-28.

I think we were the first to go over into the Elk Hills to locate, except the men we brought out; we saw no evidence of anybody else being in there. That was in 1899. I think that Dr. Sylvester followed us in making locations.

I think the oil excitement began in the vicinity of McKittrick in 1899, and lasted a couple of years or until some time in 1902. During that time there was an influx of people into that vicinity, many of whom had no experience in the oil business. I, myself, had had very little. These people made [**347**] a great many locations. There were locations made on the flat South, West and Northwest of the Elk Hills.

I do not think that during the oil excitement there were locations made on practically all of the available land within a radius of ten miles of McKittrick. Most of the locations followed the trend of the hills, which is practically Northwest and Southeast. We, and others, have been induced to believe that we must confine ourselves to hill land from the fact that it was possible to reach oil sand at less distance there than out on the flat.

The people did not make locations for a considerable distance in all directions from McKittrick; I think I am stating the fact to you as far as I know it now and as I recollect it—and I kept myself very familiar with the work that was being done on assessment work, and locations around McKittrick and around Sunset, and in the immediate surroundings of the Kern River field, which was about the only territory we had at that time where a well was drilled.

I first became interested in oil property near McKittrick by scripping four thousand acres of land—I think about the time we located in Elk Hills. The land scrip was located in townships 30-21 and 30-22.

The first development we ever did was in Section 21, 28-28, Kern River. We struck oil there. We had quite a lot of other property in the Kern River field and the country surrounding it. We only developed in Section 21, where we had 26 wells, I think, if I am not mistaken, and we started development up on 34, and struck an enormous amount of water and stopped work.

We proposed to move the derrick from that well down into the Elk Hills, but didn't do so because the land was withdrawn by the Government from entry then, and after the withdrawal was removed, we didn't have the money to begin the development [348] there, and I had entered into a contract with the Standard Oil Co. which employed all of my time. I talked with Captain Cummings, who was a special agent of the General Land Office, about the withdrawal and he told me that if the withdrawal was released our rights would be restored. He was around there about two or three years.

I don't claim to be an oil expert at all. I have had very little experience in the development of oil properties up to 1905, and knew very little about it except from observation and conversations with men who were working on properties in which I was interested.

I used to go to Sunset very frequently with Mr. Jewett. We would drive out there and remain two or three days, and during that time, I would talk with the men and observe what was being done, examine the country around, the nature of the rock. I was then trying to educate myself, looking for information myself.

A great deal of the work then being done by Jewett & Blodgett was being done because they were obliged to under their lease from the locators of the lands they were operating on.

From 1899 to January 1, 1905, lots of wells were

being drilled—lots of people were under contract, like Doheny & Canfield. They had a contract with the Santa Fe for a dollar a barrel for oil, 100 barrels a month. They could not stop operations. The Kern River Oil Company, the Imperial Oil Company, the West Shore Oil Company, the Kern Four and the Black Jack didn't stop operations because a great many of them were operating on leased lands. They were not all operating on leased lands. There was lots of development going on, but not so much as would have been had conditions been different. There was undoubtedly quite a good deal of development going on all the time. A good many of them were under leases, and were compelled by the conditions of their leases, to drill so many wells a year. Other men had contracts for the sale of their oil at a good price, [**349**] and they were very anxious to fill them. I think those two classes included all who carried on development work from 1899 to 1905. I think there were some others outside of them.

The reason we did not go ahead and sink a well in the Elk Hills was, as I have before stated, the fact that the Government had withdrawn the lands; and when the withdrawal was cancelled, some of the men, and myself as one of them, didn't have as much money as we did in 1900. I have been buying land.

I had negotiations with Mr. Bartlett, which I have mentioned, in 1900. We eventually sold him a quarter section of land after his people had turned down the other land on account of the withdrawal.

I tried to interest a man named Havens of San Francisco in the lands,—also a man named Edwards, who had been in the employ of the Standard Oil Company. We went out and spent a couple of days looking over it, and he was positive he could interest lots of people in leasing from us, but he did not.

We spent about $20,000 altogether on this land in six years. We didn't attempt to do all of the assessment work; we didn't have the money to. What we wanted to hold was what we considered the best land, the land that was most likely to be oil lands. We probably did assessment work on a quarter of the claims we held.

I met Mr. Owen in Bakersfield in 1903. We discussed the general trend of the Elk Hills. I asked him whether he thought we would likely get oil, and he said "Yes"—I don't know his exact language. He said something about the depth we would have to go, but I can't say what it was now. I am not sure whether he said it was three or four thousand feet. I think he said it would be deep. I thought myself it would be at least two thousand feet, but Mr. Youle always contended it was shallow territory by reason of the uplift. The hill, he said, made an uplift; it was [350] not caused by erosion, but by an elevation from below.

RE-DIRECT EXAMINATION OF N. C. FARNUM.

We had a camp in the Elk Hills and maintained possession, I think, from the time we made our lo-

cations until about 1906. We were in possession of the locations in 30-23.

We purchased quite a lot of land from the railroad company in the Kern River field, and tried to purchase, 25, 30-22.

After Mr. Treadwell, who was oil expert for the Southern Pacific Railroad Company, began his system for withdrawing lands from market, we did not succeed in purchasing other lands from the company except two sections in 31-24.

He stated that he authorized or insisted upon the withdrawal of lands of the Southern Pacific Railroad Company in Kern county that he considered valuable for oil, and that he had a conference with Mr. Kruttschnitt and Mr. Huntington over the proposition, Mr. Kruttschnitt differing with Mr. Treadwell, and Mr. Huntington decided in Mr. Treadwell's favor—that the lands should be withdrawn.

We tried to purchase land in 25, 30-22 in the Elk Hills, but were not able to do so at any price. Mr. Treadwell said they were not for sale.

I was interested in an application for six sections in township 19-11—five and a half or six sections. The first payment was made and accepted, and a receipt given for it, but the deeds were never transferred, as the San Francisco office said the New York office would not consent to giving any deeds, and the money was returned. That was because of the proximity of the land to an oil field. I knew H. L. Packard; I was in Mr. Madden's office in San Francisco

while he was land agent for the Southern Pacific Railroad Company, with Mr. Packard, in 1900. [351]

Section 16, 30-23 sold in 1910 for $150 an acre.

RE-CROSS EXAMINATION OF N. C. FARNUM.

Last year a crop of barley was raised on part of section 16, 30-23. There was some level land lying on it.

I was living in Bakersfield in 1904. The ECHO and the CALIFORNIA newspapers were published there at that time. I think I took both of them. At that time I was very familiar with the townships in the Elk Hills.

In 1900 or in 1901 I tried to purchase all of section 25, 30-22 that was owned by the railroad company. It was on the west slope of the Elk Hills, the very small part of it in the flat. We did not attempt to purchase any in 30-24, but we did attempt to purchase in 31-23 and 32-23. [352]

PARKER BARRETT, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I am an oil operator and engaged in the brick business in Kern County. I have been in the oil business since 1900 at different times, not continuously. I was at one time connected with what is known as the Lake View Gusher. I located the ground on which it is situated, and assisted in promoting it. It is located on fractional section 25, in 11 north 24 west.

The time that well was produced I presume it was as large as any other well in California. It had an average estimated production of about fifty thousand

barrels for the first six months. That was an especially large well in those days.

I have been interested in other oil property—in section 32, 32-24; in 30-11-23, and 8, 11-23,—and in other properties.

I have been interested in lands in the Elk Hills. I think there were three sections in a line in 31-24, and perhaps some in 31-23. I think I first went to the Elk Hills in March, 1909. There were no actual drilled wells in operation there at that time, and no oil had been produced.

I know of an oil seep in the northwest quarter of 32, 30-24, and have seen it.

The Elk Hills were apparently in the same condition when I was there in 1909 that they were in 1904. There had been nothing done to them. There was nothing on them except one cabin I could see, on section 32, just above where this seepage or discoloration of the ground, of the sands, was.

That seepage assisted me in my knowledge in thinking that the lands were good oil lands. I had already determined that it was oil land before I went there from talking with different geologists and men who had been there. I had heard of this seep- [353] age a good many years, was one thing that made me think that it was probably good. I think I talked with a dozen geologists—with Dr. Fairbanks, Dr. Ochsner, and Dr. Owen of the Southern Pacific, and with others,—I can't call their names—that were sent there by my associates. I think my first talk was

about three years before I went in there to make locations.

I had a conversation with Dr. Owen in Bakersfield. First, he did not pretend to know anything about that country. He kept asking me questions. And after I had answered him and talked to him quite a while, and answered a great many of his questions, I told him that I knew he was more familiar with most of the country than I was—knew about it, at least, and he admitted that that was the case, or at least that he had been there frequently. When I went into the Elk Hills I formed an impression of the oil character of the land from the general appearance of the hills and the country, as compared with others. I have not had any reason to change my opinion since that time as to the oil character of these lands. I think I had as good an opportunity to judge in 1909 as to the character of these lands as a man could have had in 1904. I don't think there was any difference in the appearance of the country.

I know of oil seepages in the vicinity of the hills—there is a gas blow-out in section 11, 32-24, which I first saw shortly after the first of 1901. From Sunset to McKittrick, along the line of the eastern flank of Temblor Range, I have never seen anything that I really called seepages. In Maricopa there are some seepages. I saw them I think about 1907.

In 1909, at the time I visited the Elk Hills I was acquainted with the asphalt in 30-22, around McKittrick. I had known them before that.

I have frequently been on the train between McKittrick and Bakersfield. I know where the train passes through the gap on Section 14-30-22. I helped build the road. Just about where the road passes through the narrow gap **[354]** there is asphaltum beds and brea.

The Elk Hills, including 30-23, has no value for agriculture. I could not say that they had absolutely no value for grazing, but they have very little for that. Sheep occasionally range across there, and find very little food, even in a good season. My reason for saying that they have no agricultural value is, in the first place there is very little of it that lies so that even if you have water on it, it could be cultivated, and if you attempted to turn water on a good deal of it, it would all wash away. There is a little vegitation on the hills, principally scattering sage brush.

CROSS EXAMINATION OF PARKER BARRETT.

I am not interested in the Elk Hills at the present. In 1899 I made some locations and kept them up. I later sold them. They were in 8 and 9 three quarters of 7 in 31-24, and 13, 11 and 1 and 3, in 31-23, I think. I had nothing in township 30. Never did any work on them. People got there ahead of us.

I was in there in 1904. Don't know what was there then. At the time I went there in 1909, the Honolulu Oil Company was working on one quarter section of 10. I don't think they made a discovery in March.

They did make a discovery but I don't know when they made it.

That discovery had no influence on me in forming a conclusion as to the character of the Elk Hills unless I changed my mind since first seeing them. I think I have heard of the Elk Hills twenty years before 1906, but I never went there until 1909. I don't think Professor Owens asked me anything about the Elk Hills. The questions he asked me were generally in regard to the Midway. I could not have told him anything about the Elk Hills at that time because I had never been there. I was familiar with a part of the Midway. I don't remember that he asked me of the Elk Hills.

I asked him in regard to the Elk Hills. [355]

W. H. McKITTRICK, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION.

I have lived in Kern County, California, since 1890, and during that time I was acquainted with J. Owen. I have known him since 1899. I first became acquainted with him in Eagle Pass, Texas. He was geologist for the Southern Pacific.

I went down there to meet Mr. Owen to go to Texas to look at the mine, and on his advice I invested in this property; and it did not turn out very well, and Mr. Owen apologized after that, always, for making such a bad investment for me. The next time I met him was on the Oakland boat in 1903 or 1904, I think in 1903. At that time he told me: "I am awfully

sorry about our investment down there, but I have something that I will put you on that will make you more money than the mine we might have had in Mexico." I asked him what it was and he said he was not at liberty to tell me then, but would tell me when the proper time came.

He did not tell me what kind of mineral it was, but in 1907 I met him in Bakersfield, and he said then that he was ready to put me on to what we were talking about in 1903.

He told me that he had been working out in the Elk Hills for a number of years, and that no one knew he was out there at all, and he told me to say nothing about his being out there. And he said he had been out there in the employ of the Southern Pacific Railroad, and that he had located these large deposits of Fuller's earth, and he said he would name four men, and that I could name four, and we would go out there as take as many sections as we cared for as they would all be open on the first of January, 1909; and he said to locate as many as we cared for, and then do the development work on the most likely looking deposits of Fuller's earth and then drop the others, which we did. We kept four and a half claims.

At that time he said there was a possibility of oil [**356**] there, but oil could not be found under 3400 feet. Of course, at that time, no one thought of going 3400 feet for oil. I didn't know of anybody else thinking about it.

At that time I was acquainted with E. T. Dumble,

who was alleged to be a geologist of the Southern Pacific Company. I had known him a number of years. In fact, I went to Mr. Dumble's office and met Mr. Owen, and talked there in Mr. Dumble's office in San Francisco, about 1907. I had met Mr. Dumble before that on the train. I don't remember just what year that was. I don't think it was much before 1907.

Mr. Owen told me on several occasions that Mr. Dumble was his partner in any venture he might make; because, at the same time, he wanted me to go into an iron proposition in Sonora. Mr. Dumble was interested as half partner with him in the venture, as he told me, and also anything that he took up. I think he told me that when we went down into Mexico in 1899.

When Mr. Owen told me about that down in Bakersfield in 1907, he said: "I have just the man we want in this, Mr. Packard, who was running a Fullers earth mill; and he knows all about Fullers earth, and we will go down and see him." So he went down to Mr. Packard's office, and he showed us his books where he had a profit between six and seven dollars a ton on this Fullers earth he was grinding out. And he said it was a fine thing, and he would go in with us. He said "if you will take the management of it and go in with us, I will go in with Mr. Owen, and I will name you and Mr. Rice."

Mr. Owen named Mr. Charles Haverkern, Mr. Chapman, Mr. Richardson, Mr. Wible; I think it was Samuel P. Wible.

After we had made our locations and done our assessment work, and after the withdrawal of the land upon entry by the President, some people jumped our land, and the Associated Oil people bought their rights or made some agreement with them. I never knew what that agreement was. [357]

I and my associates were at that time attempting to acquire patents on our locations for Fuller's earth. We did not locate for oil. We located for Fuller's earth and perhaps gypsum. I don't know for sure. I left that entirely to Mr. Owen and Mr. Packard. Packard was my lawyer at that time. I don't know as a matter of fact that we located for oil and other minerals besides Fuller's earth.

The contest I have spoken of was brought about by the Associated Oil Company, I think. Their employees gave testimony in this case, and the contest is now pending in the land office.

I believe the contest was based on an oil discovery.

They had their experts at the contest saying that it was not Fuller's earth.

I am acquaitned with W. H. Porter, President of the Associated Oil Company. I had a letter from him with reference to the settlement of the contest. A few days after I received the letter I met him in San Francisco, and he asked me if I had received it.

I think they were contesting a half section, but I can't remember just the half section it was. It is in 30-23. We had located 20, 22, 24, the North Half of 26, and the North Half of 28, 30-23, with Professor

Owen and the other associates I have mentioned. There is another half section that the contest was over. To the best of my recollection it was in 24.

The land in contest is the one on which the Associated Oil Company has been drilling a well. I couldn't say when they started to drill it. We were not allowed to go out there on account of the mounted guards, at one time, by the Associated.

The letter I received from Mr. Porter mentioned above, is marked "Claimant's Exhibit No. C." And for an explanation as to why it was so marked, I will say that it was a part of the evidence before the Land Office in Visalia, in the contest I have [**358**] referred to. When Mr. Porter asked me if I had received the letter, he referred to this letter.

Whereupon, the attorney for the plaintiff offered in evidence and read into the record, the letter referred to, which was marked "Plaintiff's Exhibit McKittrick No. N," and reads as follows:

William McKittrick, Hotel Potter, Santa Barbara, Cal. Dear Sir:—I have advised Mr. Scribner that on your return to San Francisco, which will be next week sometime, you will either call upon him, or communicate with him and arrange a meeting, at which the conflicting titles of the Elk Hills properties may be discussed. Mr. Scribner will negotiate with you along the lines we have discussed and agree to keep one string of tools running on each section so long as oil is discovered in paying quantities, a well producing 100 barrels per day being considered a paying

well. We will do this drilling so that each quarter of each section will be developed in turn and paid for. The contest, as I understand, comes up for hearing on August 8th, and if trade is to be made so that you are to proceed to get patent without contest, any contract entered into between us should be executed within the next ten days. Please advise Mr. Scribner when you expect to be in San Francisco and he will arrange to be here at that time to meet you. I hope you and he will be able to come to some agreement. Yours respectfully, W. S. Porter.

The witness continuing, testified as follows:

Mr. Porter wanted us to pay $200 an acre for the land in controversy in that contest, and for all the land held by us under all the locations. I did not accept that proposition; I would not consider it.

I have no idea how much land is worth in money value. **[359]** All I know is that there are immense quantities of Fuller's earth there, and I know that they have discovered oil there since then.

In answer to the question as to whether I have an idea that the land was worth more than we were offered, I will say that there was a matter of principle involved—whether you would allow a man to hold you up and rob you, take your property away from you, and name his price. That was one thing. I don't believe I would consider any value or consideration that the Associated Oil Company might offer me, as an inducement to sell that property.

Mr. Owen said in the conversation in Bakersfield

that there were thousands of tons of Fuller's earth exposed in those sections, and that he considered it the best quality of Fuller's earth in the United States. He said that he had many tests of it himself. In fact he showed me a test of Fuller's earth at that time.

In answer to the question as to whether Mr. Owen had made a thorough examination of the property covered by our locations, I will say that he told me that he had been there many months. In fact, he had been there many years—four or five years for that matter.

CROSS EXAMINATION OF W. H. MCKITTRICK.

I am not interested in the oil business and never have been.

I first went into the Elk Hills many years ago. There used to be a band of elk there, and I used to go over the hill looking for them. I was first there, I would say, in 1900.

I was then ranching. My ranch is about sixteen or seventeen miles from there.

I think I have been right on the Elk Hills but once up until 1907. I never made any examination of the ground for its mineral possibilities prior to 1907, and prior to that year **[360]** I had not had any experience in Fullers earth. I relied entirely on Mr. Packard, who was running a Fullers earth mill.

And I first met Josiah Owen in 1909 at Eagle Pass, Texas. I had no conversation with him then with reference to any portion of the Elk Hills. The first conversation of that kind I had with him was, I think, in 1907.

When I talked with Mr. Owen in 1903, he said that he was not at liberty at that time to tell me what he would put me on to. He said that he would put me on to something good after awhile, but was not at liberty to state what it was, and it was not until four years later that he came near me with reference to it. I had then forgotten all about it until he looked me up in Bakersfield. He then said that he had been many months out on the Elk Hills, and that that was the proposition he wanted me to take up when we had the conversation on the boat, and he was not at liberty to make any statement at that time because he was working for the Southern Pacific Railroad, and that since that time he had made arrangements with the Southern Pacific Railroad that he and Dumble could take up what land the Company didn't want, and do as they wanted to with it. But he didn't want his name mentioned at that time in 1907. He told me not to mention his name.

Mr. Owen was a gentleman, and I always had the highest regard for him as a truthful man. He did not say anything then about using Mr. Dumble's name.

I did not at that time express any surprise or ask any questions as to why Mr. Owen's name was not to be used. I had the utmost confidence in him, and asked no questions. His request was that I should not say anything about his having anything to do with the taking up of this land in the Elk Hills. He told me that he had known about this land for some time and kept it quiet. My understanding was that he knew

about the land all the time but that he was not at liberty to take other people in until he had made this arrangement with the [361] Southern Pacific Company; he was in their employ; and he said, I believe, that it was not an honorable thing to do as long as he was in the employ of people, to make any deals on the outside. I don't remember that he said that he had kept quiet about what he knew about the Fuller's earth. I didn't understand that he had not made this discovery of his known to anybody prior to the time he told me. He did not tell me of anyone to whom he had reported it, and I did not ascertain that he had reported it to anyone prior to the time he told me about it.

I only met him three or four times after that; just met him on the street and said "How do you do." He told me that he knew in 1903 there were large quantities—thousands of tons of Fuller's earth in the Elk Hills. He told me that there might be a possibility of oil there, but that oil could not be found within less than 3400 feet, but he could not tell whether it was in paying quantities or not, but that he believed that oil was there at that depth.

I was confining myself to Fuller's earth, and didn't consider the oil at all. It might have been the understanding at that time that that depth was prohibitive, but I am not up on the oil business. I never paid any attention to it. I can't say that it was my understanding at that time that that depth was prohibitive. Mr. Owen didn't say anything to me about the depth being prohibitive. He said that he had been out there so

many months, and that he didn't think there was any chance of oil in less than 3400 feet, that there might be oil at that depth. He suggested the locations for Fuller's earth, and did not say that it was for the purpose of getting the oil. My purpose was Fuller's earth, and Fuller's earth only, and not for oil. Of course I knew that if oil was ever discovered, that was something that would be all right,—it might come in all right later, or after we got some of our Fuller's earth off; but I didn't consider at that time **[362]** the possibilities of oil as a portion of the value of our location. We located purely for Fuller's earth. My ideas were based on what Mr. Owen and Mr. Packard told me.

The locations were made in 1909. The lands were located by others in 1907, and we could not locate then. I think the prior locations lapsed and were abandoned; we did not buy them out.

We located several sections with the idea of giving us plenty of time to develop these bodies of Fuller's earth, and then we would abandon the others. To the best of my recollection, we located 20, 22, 24, the north half of 26, and the south half of 28, in 30-23. There was another half section in 30-24—a part of a section, or a section, I don't know which. I think we are still holding the portion I have just mentioned. I am certain that we located other lands than the sections I have mentioned, and have given them up. I couldn't tell what the other sections were. It may be a fact that we have given up portions of the sec-

tions I have mentioned. I think we developed Fuller's earth on all the sections I have mentioned; I can not be positive. We haven't sold any of the Fuller's earth. At times we were not able to go on the land; we were kept off. We have not received patent, and I am aware of the fact that many mines are worked and large proceeds derived from them without patent having been obtained. I don't know that anyone has prevented us from hauling Fuller's earth to market. We have not marketed it—only took it off to make tests.

I am interested in the property but it was entirely in the hands of Mr. Munzer. I believe the Associated Oil Company is trying to rob us.

In our contest we contended for the land as containing Fuller's earth, not as containing oil. I don't know that I contended that it does not contain oil. The statement from [**363**] Mr. Owen was that it possibly did. I don't think the question of the lands containing oil was raised by our men in the contest. I didn't hear any testimony as to that.

Our locations were on even numbered sections, and I cannot say that prior to January 1, 1905, I knew of any deposits of Fuller's earth on any odd numbered sections in township 30-23, and I cannot say that anyone else knew of such deposits on the odd numbered sections in that township prior to that time, and I cannot now say that there is Fuller's earth on any of the odd numbered sections in that township in paying quantities. To the best of my knowledge

there are paying quantities on the even numbered sections. I have seen earth that is pronounced Fuller's earth, and believe it to be Fuller's earth, in paying quantities. I have the opinion of experts to that effect. I was so informed by Mr. Jewell, who was a Special Agent for the Interior Department at one time, and is now engaged in the oil business in Bakersfield as a consulting geologist. He was also an expert on fences and enclosures. I received the opinion of the experts in 1907.

We made no attempt to locate the lands in 1907. They were already located then by others. I don't know what work was done on the locations; that was left entirely to Mr. Packard. I don't remember how much money I paid on the locations; I paid my part. I believe there was something like nine or ten sections located. I cannot tell how much was expended altogether on the locations.

There was no injunction from removing Fuller's earth from those locations that I know of.

Mr. Owen told me in 1907, that E. T. Dumble was his partner in any enterprise that he had.

RE-DIRECT EXAMINATION OF W. H. McKITTRICK.

One of our men reported to Mr. Munzer that they had been driven off our land by the Associated Oil Company armed [**364**] guards. That did not prevent us from developing the land for Fuller's earth since then. We took counsel, and were told to go right on with our assessment work every time we

could get in there, and simply do nothing but our assessment work.

I have been in the ranching business since 1890. My ranch is located at Kern River Delta below Bakersfield; embraces about 2300 acres, of which about eighteen or nineteen hundred acres are under cultivation. In my opinion, the Elk Hills are absolutely worthless for agricultural purposes. I don't think a sheep man would pay taxes on it even as a grazing proposition. I never saw a drop of water all through them. The surface is so eroded that nothing could be done in the way of agriculture, even if they had water. I did not own it for grazing purposes. I could not pay the taxes on it because they only have grass on it maybe twice in four or five years. It is a little short—grass called poverty grass, that grows there. Cattle could not go in there.

RE-CROSS EXAMINATION OF W. H. MCKITTRICK.

I say that for grazing purposes the Elk Hills were absolutely worthless. I would not own it; I would not want to rent it. I used the word "absolutely" in order to emphasize its worthless character for grazing. When I was there in January or February there was no vegitation growing on the Elk Hills, and no grass that I would call grass at all. I saw no signs of sheep having been there. In the early spring you might get a few weeds, but as far as grass is concerned, there was nothing there. There may be some there now. There was none there when I was there—

not enough for grazing purposes, over the country I went over. [365]

RE-DIRECT EXAMINATION
OF W. H. MCKITTRICK.

I have been ranching for twenty-five years. Have grazed cattle but not sheep. There is some water down in the flat in 30-23. Mr. Miller controls it all, I understand.

W. E. YOULE, a witness called and sworn on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION
OF W. E. YOULE.

I am 65 years old and reside in Los Angeles. For the past thirty years I have been engaged in the oil business. I first went into the oil business in Venango County, Pennsylvania, in 1863. From 1863 until 1875, I followed the new fields—new developments rather—of Pennsylvania from Pit Hole, Oil City, Parker's Landing—that is down towards Pittsburgh—all along the river and creek there, Oil Creek and the Allegheny River. I was engaged in the examination of new fields all my life.

I was in the Pennsylvania fields from 1863 until 1875 except three years after 1866 I was in the Canadian fields at a place called Patrolea in Ontario. Those fields were undeveloped at that time.

Before leaving Pennsylvania in 1866, I was in charge of the United States Oil Co. there and two members of the company, two directors, were interested in lands in Canada that they thought had indi-

cations of oil. I had been rather lucky for those people in the Pennsylvania fields and they wanted me to go to Canada.

The Canadian fields proved to be good oil territory; they got lots of oil there; they are producing oil there yet.

From Canada, I went back to Pennsylvania, still in the **[366]** oil business. At the request of a man named Kern, I joined the firm, took charge of it, contracting and drilling new territory.

Later I was employed by Mr. Sifton, a member of parliament of Canada, and Mr. Glass, then Mayor of London, Canada, away up in Manitoba, on some oil land that had indications but had not been developed. I was there a short time and did not attempt to develop the land because of inability to tell anything about it.

After I left Canada at that time I went to Salt Lake and examined, to a limited extent, the banks of the lake for gilsonite and asphaltum. I didn't like the looks of it. At that time I was not familiar with asphaltum base oil. I thought the stuff was too heavy to pump. They had nothing of the kind in the East. They had paraffine there generally.

From Salt Lake I went to San Francisco where I knew the secretary of the company I had once managed, was a member of the firm of F. B. Taylor & Co., handling oil of every kind. The same gentleman is now Vice-President of the Standard Oil Co., Mr. Schofield. He was interested in oil operations in California and told me they were attempting to get

an oil well down in Newhall, Los Angeles County, and would like to have me go down there and see it. I went down. I think I went down alone. I came to Los Angeles first. And, while making the enquiry, during that time, I met W. W. Childs, brother of O. W. Childs, and he told me that R. C. McPherson, an oil man, was here in the city and operating in Newhall. Mr. Childs kept a store on Los Angeles Street at that time, a tin and sheet-iron store, and was making oil well pipe, riveted pipe, for Mr. McPherson; and sometime during the day, later, I met Mr. McPherson. I arranged with Mr. McPherson to go out to the well and take charge of it and fish out a lot of casing and tools that were broken off in the hole. **[367]**

That field was not developed at that time. It was later developed and one of the nice fields of the country. It was never very big, but very prolific, that is lasting. I made an examination of that territory. The examination I made had largely to do with its subsequent development.

While I was at work in that field, the San Francisco office wired me to go up into Santa Clara County, California, near Los Gatos, and make an examination, it being reported that there were indications of oil there. I went up and made the examination and drilled 8 or 9 wells. They were producing wells and were the first developed there. There was no question but that the development of that field was due to my examination and the conclusions I reached from my personal observation. That field did not last long. It

is producing, I think, a little oil yet—did for twenty years—but it was always light.

From Santa Clara County I went back to Newhall. Mr. Felton said—"I am not making any success down there. I would like to have you go down."

I will never forget the circumstances there. He was to buy me a new suit of clothes for every flowing well I would locate and strike; and I had about a dozen there in Newhall.

Subsequent to my operations in Newhall, I made other investigations of oil fields in this State. I think I left Newhall in about 1885 because it had been determined that diamond drills were to be used and I thought that would be the last thing that I would want to see.

I then made investigations of an undeveloped field in Fullerton way with the result that I agreed to put my own rig, machinery and efforts and everything in there and just go ahead and develop. That was 25 years ago. After getting 4 wells to going, I sold out. That proved to be a good field.

I then went to Mexico and examined oil territory and [368] made an adverse report on it.

I then went to New Mexico for the purpose of examining lands alleged to be of oil in character. They didn't look good to me although there are oil springs cropping. I understand that very recently, 2 or 3 small wells were put in there.

I think I then went to Bakersfield, California. There had been some development there. About 1877

an old driller who had worked for me went to McKittrick and drilled a well for an oil company. That was away back underneath the out-cropping underlying everything that lifted up. Evidently the party who located the well could not have noticed the conditions there at all. I first went there with Henry F. Williams, an employee of the Pacific Improvement Company, or agent for them. That was in 1890. He came out to Sunset, where I was getting ready to drill. I had been in Sunset before that, in 1889 first. I went into that field before there was any development.

I made an examination from the vicinity of Sunset North as far as McKittrick along at that time. It looked very favorable for oil. In fact, to be very accurate, I examined the river field, Kern River field, first in 1889 and found it very confusing, that is, the formation showed so much erosion that it was hard to arrive at any intelligent opinion about it. Of course, there were earmarks enough and evidence enough, and all that, but it was hard to get at the correct idea of it in my mind.

Mr. H. A. Blodgett employed me to make the examination in the river field, Sunset. I made the examination and found the conditions easier to determine, due to the exposed edges of the formation. As evidence of oil, there were outcroppings—springs of oil and outcroppings, the long lines of the formation that were not faulted, was a good indication that if oil was found it would be very extensive. The fact that it dipped into the valley towards the river showed something new to me; it looked to me to be the biggest

thing I ever saw in my life. The dip [369] of the valley would naturally make you think it would run horizontal, except in the Buena Vista Hills there was an uplift. You could see that plain.

There was seepages along the line of contact with the Temblor Range there around Sunset. They were in a great many places all along. What I call seepages are not all live oil, but positive evidence of oil-soaked sands and shale—some dried up, and some had made hard asphalt. The evidence there was very plain from—I don't remember the section, but it was from 3 to 5 miles along there. At that time they seemed to impress me very much.

Money was invested there on my opinion; there was a great deal of money invested. Our first efforts there were not very profitable, but determined good sand and direction, and had oil, and sold oil and made asphalt. But oil went down to 10 or 15 cents a barrel, and you could not pump water for market for that—much less drill for it.

Subsequent to that time, I made further examination of the field to the North, Northwest. Before I went very far in the Sunset, I think we were getting a rig ready, Mr. Blodgett for whom I was working—I was interested with them—had an interest in it. The conditions around McKittrick were about the same as Sunset. Indications of oil right along, and some very heavy deposits—appeared to be heavy deposits of asphalt; but upon close examination, I did not think it was asphalt very much of it, painted earth stained with oil.

Henry F. Williams wanted my report or opinion on the country for the purpose of giving it to the P. I. Co. I made a report and gave it to him. Without any question, it was very fine looking territory to me. I so stated in my report and was then asked to go to San Francisco and did so where I met F. S. Dowtey, Secretary of the P. I. Company, I think, and Ed Hays, Assistant Secretary. I think I met A. N. Towne. He was **[370]** manager or superintendent or something. He was with the railroad people. I do not know whether it was with the Southern Pacific R. R. Company or the Southern Pacific Company. That would be hard for me. They were the officials of either the P. I. Company or the Southern Pacific Company or the Southern Pacific R. R. I could not say which. I do not remember exactly what conversation there was at that time with reference to the field. I remember the substance of what I said. I was very much in favor of the field; and had reason to feel very sanguine that it would make good terrtiory. I do not know what their purpose was in having me go up there. I stated my conclusions to the people I have mentioned. That was before the railroad was built. I do not know whether my opinion had anything to do with the building of the branch road from Bakersfield to McKittrick. I made some statement as to where it would be profitable for the railroad company to build in there. They asked me what I thought of the territory, I know that. I cannot remember the exact words, but I was up there for two

days and I told them what I thought of the territory and I knew I thought it promised to be very good territory. Nothing was discussed with me at all in regard to the proposition of building a branch road from Bakersfield to McKittrick. That road was commenced very soon after that.

After that time they were operating a lot of kettles digging up asphalt in different places around McKittrick and melting it and refining it. They had been doing it for about a year before the railroad was built. That was a sort of preliminary to get the value of that deposit. But it proved that those deposits did not go down very deep and before long they were out of asphalt—that is, the pure stuff. During that time it was managed by a man named Hutton.

The P. I. Company wanted me to go over and look at it. [**371**] They said things were not going right over there. I was at that time operating at Sunset. This was after the railroad was built. I went over there and found quite a number of men, 50 I suppose, working there. I made an examination of the situation and made a report that I thought it would be a good idea to find some asphalt before they attempted very much more. The railroad had become discouraged at that time. I scattered the men out in the hills; and in digging the holes we found on Section 34—I forget now the township and range, but, at any rate, about a mile and a half, I guess, from the old terminal point of the railroad, and from the

old works, a heavy vein of asphalt. It was about ten feet thick. We didn't know, of course, the extent of it at the time we struck it, but just on top it was about ten feet wide, dipping down about thirty degrees. It was very shallow; about 30% purity. I reported to both Jewett and Blodgett and the P. I. Company.

After that discovery, they seemed to want me to take care of the proposition. I agreed to do it but cannot remember just how we divided it up between Jewett and Blodgett and the Asphalt Company there, but I had to look after both places, about thirty miles apart.

About this time C. P. Huntintgon, A. N. Towne, Hatsfield, son-in-law of Huntington, Henry F. Williams, Mr. Burkhalter, I think it was—I am not sure of Mr. Burkhalter, but one of the superintendents —came to Asphalto in a private train of cars, two private cars, I think. I had forewarning of their coming by telegram from San Francisco. I sent down to Henry Miller's and got a four-seated surrey, four nice mules; took the party out; and I had a team myself. C. P. Huntington said he preferred to go with me rather than ride behind the mules. So we made quite a little trip all around through the country.

I do not know what they were doing there. They came [**372**] out to see me, so they said. They came out to look over the country. I could not say as an oil business. They might have come out there to go

over the branch road. I could not say what their business was. They went out with me and examined the property. We went out quite a way. I suppose we drove 10 or 12 miles or further than that. About all I talked to Huntington was about my conclusions about the territory around McKittrick as an oil proposition. I remember very distinctly that he impressed me very much as being a man that drove into details a good deal. The discussion about the possibilities of the country with me were always as to oil. I never paid any attention to asphalt. I knew that asphalt was only the result of evaporation on the surface and that the fountain head that supplied that asphalt must be below there. I remember saying to Mr. Huntington that I thought their stock would be worth more money if they had 100 years fuel down there.

I do not remember that we went towards the Buena Vista hills to the south-east. I know the valley called the Elkhorn Valley which lies between Buena Vista hills and the Elk Hills. We went down in the south-east along that valley. We went to a section there called Section 36, that had some little sharp hills in there that showed the formation very plain. I think we drove around the turn of the railroad there. There was more asphalt indications there. I had 30 or 40 men digging holes around that country and quite a number of holes showed asphalt. With us oil men, we didn't care anything about the asphalt; did not cut any figure with us at all; but it

was evidence, just the same. But we knew without that asphalt; we didn't need that; but to those who didn't know that, we would show the evidence of asphalt that was contained in these holes around. Little streaks of asphalt anywhere, most, in there, for a radius of several miles. The asphalt was evidence of the [**373**] existence of oil deposits, oil sands. There must have been something to furnish that evidence, and that was below.

The Elkhorn Valley lies between the Elk Hills and the Buena Vista Hills. I cannot say whether the section I have mentioned was in the Elk Hills or the Buena Vista Hills. I think we went on the west side of Elk Hills. I remember describing the synclinal in there, and believe that those hills were the uplift of the hills on the other side of there, the other formation. In other words, it was dipping towards those hills and there must be a return dip. They could not always dip one way, that was the Elk hills.

I had formed that conclusion before the visit of Mr. Huntington and his associates. I formed it when I first saw it. I could not say that I expressed that opinion in any way to Mr. Huntington or any of his associates. I expressed my opinion just as I thought it and believed it; but I do not remember just what I did say to him. I merely know that I told him that I believed in that country, and gave him my reasons just as I state now. In a general way, I explained the thing to him that I believed that that country was

not a shoe-string at all, but it was a great big field, from the evidence. The formation did not dip into the hills, where it could be faulted and broken up here and there, but dipped into the valley where it might be a very profitable field, provided you could reach it. You cannot tell, of course, what the depth was.

These uplifts can be seen when driving down towards the lake; but if I remember the line of that trip we made, we went down to the turn of the railroad, and I had built a kind of road over there for the purpose of getting water over the hills toward Lokern, toward the Elk hills.

Just prior to that visit, I had some men digging out the pits and holes I have mentioned. They came out when we had [374] struck this vein of asphalt. I remember distinctly that one of the P. I. people said to me "if your report is not favorable, this branch comes out to Buttonwillow"—that they would abandon the branch as far as Buttonwillow.

I think we had holes dug in the Elk hills. I am pretty positive we did. There was no asphalt in the Elk hills that I could see.

There are oil sands in the Elk Hills. I saw them at the time I was in there. I think it was in 1898. I was there two or three days. I instructed Mr. McMurdo, or somebody, to go in there and set stakes and we would locate that country—mineral locations. Those locations were made as the result of my opinion from a personal observation of the Elk hills.

It seems that at that time we were a sort of bureau of information there. There was no one else there to go to. While I don't suppose I knew very much about it in comparison with some people now-a-days, at that time they all came to me, and I suggested, without inspecting it, that it would be well to locate it, and I believe I was one of the locators. I did not make the locations myself.

That country was a blanket. It was not like the Ventura field which dips down 60 degrees where if you throw a stone out there and drill there, you will get a dry hole. The uplift in the Elk hills indicated that you might get oil at 1000 feet, or might get it at 2000 or 3000 feet, but it was shallower there than it would be in the syncline.

I made a chloroform and fire test of the oil sands I found in the Elk hills. The results showed bituminous matter—gases. The Elk hills was full of gas. It was burned with gas all over. It was evidence of a very volatile oil and evidence of an oil that might not have much asphalt base. It was very familiar to me, for I had seen parallels of the same [**375**] kind of formation. I saw it over in Fullerton. There were a number of places where gas could be found along the hills. I cannot say it was generally distributed through them. I know it was in two or three places.

I didn't show any of the Huntington party the indications in the Elk Hills. I did not go that far.

Relative to a comparison as to the characteristics of the formation of the Elk hills and that along the

line of contact of the Temblor Range at Sunset northwest as far as McKittrick, I will say, why, the Elk Hills, always, to me— There was an intuitiveness there that I always felt like getting away from the broken conditions I found on the edge of the formation. And the Elk Hills looked good to me all right. But that is as far as you could give any geology on it. It looked good from every standpoint; but there was no evidence of any uplift before you reached the Elk Hills; therefore the same formation that existed and was cropping out on the McKittrick side, if it was an uplifting at the Elk Hills, must be uniform, must be the same; and, as long as that didn't uplift and expose itself and spill over and make asphalt was evidence that you would get bigger, more prolific wells than you could where the asphalt was, because of the fact that it was not broken. The biggest wells in the world are where there is the least asphalt.

And as to the comparative value between the Elk Hills and the territory right around McKittrick as an oil territory, I would say that I would regard the Elk Hills as one of the best locations, without a question. I formed that impression or opinion immediately and reported it to Jewett, Blodgett, Farnum and the people who were locators with me.

I became acquainted with the Southern Pacific R. R. or the Southern Pacific Co. people about 1880 for the purposes of drilling. I had to do with them at Del Monte. They had [**376**] spent about $50,000.00 in

trying to get a well down, and Senator Felton told them that if they would get me, probably they would get a hole down. So I went over to the office and met Mr. Charles Crocker. I took a flat contract of $10,000.00 or no money if I did not get a well, and I got it. It was subsequent to that time that I went over to the McKittrick or Sunset field with Henry F. Williams.

Q. During your whole experience as an oil man, Mr. Youle, have any sums of money been invested upon your recommendations on the possibilities of oil in new fields?

A. It is pretty hard to tell how much that would be. I have drilled one hundred and seventy-six wells, and they would average $20,000 apiece. That would be a whole lot of money.

Q. Do you know whether or not the officials you have named as coming out—Mr. Huntington, Mr. Towne, Mr. Dowtey and others,—on the occasion you have mentioned, had any confidence in your judgment as a practical geologist?

A. "Practical geologist" is rather the right term. Oh, I should imagine so. I had been successful. I had been very successful at Newhall, and, as I say, I had more clothes than I could wear there, in many years, upon a flowing well, and I located every one of the wells. I just had my own way. But I guess it was luck, you know. I really don't think a man could see under the ground very far. I wish I could.

Q. Have you had any reason to change your opin-

ion of the Elk Hills as an oil territory since the time you first formed it?

A. No sir. I have no information which would change my opinion. [377]

CROSS EXAMINATION OF W. E. YOULE.

I first became interested in the oil business in Pennsylvania shortly after the beginning of the oil business in this country—I don't think over a couple of years. I worked in the first refinery that was built in the world, called Thum's Refinery, as a boy.

In Pennsylvania in those days we did not have such things as gas blow-outs. We had indications there similar to what has been termed "oil sand indications" in the vicinity of McKittrick. We attached no importance whatever to them. They were merely evidences that the early prospectors started on. Subsequent to that, we got away from that. That was up the Allegheny River where the formations lifted up and cropped out. The Indians used to gather that oil in small quantities and sell it as Seneca Oil at a dollar a bottle. The early prospectors commenced drilling up there, but well after well kept walking down the river and kept getting deeper and deeper, and the deeper the wells the bigger and more prolific they were.

The experience in Pennsylvania would not help in California. The formation in Pennsylvania was entirely different. There was no return dip. The oil sand indications in Pennsylvania have this signifi-

cance, that it taught men to be very cautious, careful. That is all.

In Virginia, you have the very identical thing—I was there, I forgot to mention. Right there they have got the same thing as here, identically the anticlines and the synclines and the uplifts and the croppings and the seepage of oil just the same as in Virginia.

I never saw an oil sand in Pennsylvania on the surface, although they were up the river, I never went up there.

In California the existence of oil sands is always [378] a good indication of finding oil in paying quantities. I will make the statement broad. You show me an oil seepage with a proper development and I will show you an oil field; and if you can find any instance it is not so, it is something I don't know of. From my experience in the California field, I will say that such an oil sand indication is always an indication of the presence of oil in paying quantities. I make that statement unqualifiedly and I know of no exception to it whatever.

My first experience in California was at Newhall for a short time. Prior to that time, I had no experience in Utah. I was there and made an examination of some territory. I discovered indications of Gilsonite and nothing else. I cannot tell what direction it was from Salt Lake City. I think it was on an Indian Reservation. I saw indications of sticky asphaltum oil in other places. I didn't think much of it because it was too far from market, seaboard. If you

had the whole Salt Lake full of oil, I would not take it as a gift. I didn't give the indications there much thought for the reason that at that time I was early from Pennsylvania and I was not very much posted on these Pacific Coast formations. I was not qualified to give a very good opinion at that time on the formations on this coast, for I didn't know the uplifts, and faults, and things that existed there as well as I did later.

I was not very much impressed with the prospects for oil in the vicinity of Salt Lake. In the first place, I didn't know the asphaltic oils at all, and I thought it was too thick and I thought it would be impossible to market such oil. No man could tell until developed as to the existence of oil in any quantity.

I was at Newhall I suppose for 4 or 5 years. About 12 successful wells were drilled there under my direction. I do not think there was a dry hole there. They appeared to be **[379]** successful from a commercial standpoint. The company was successful. They sold them for over a million dollars after they had produced many years, to the Standard Oil Company. That territory was not developed and drilled altogether under my direction and as the result of my advice. Subsequent to my first arrival in Newhall, there were others drilling there. They may have advised the company, for all I know. I didn't furnish the capital for the drilling there. Others acted upon my advice and as a result, they developed wells which were commercially successful.

After that, I went to Los Gatos to what is called Moody Gulch, near Los Gatos, where I found a spring, oil leaking out of the shale. I made a report, got a rig ready, and went in there and drilled and found oil. I do not remember how many wells I drilled, 8 or 9. I doubt whether that was commercially successful territory. It was beautiful oil, worth four or five dollars a barrel; and it was just inviting enough to drill another well and then another, hoping to get a bigger one, which often happens; and our experience as oil men shows that where you get a little well, you can get a big one somewhere near, and we were after the big well, but we didn't get it. We got a hundred-barrel well while I was there at I judge about 1500 feet. That was not commercially profitable. They spent a couple of hundred thousand dollars in there.

I next went back to Newhall and then into Mexico and New Mexico.

I was in Puente and drilled about 7 or 8 wells. I must have been there 2 or 3 years where I struck oil. There is a wonderful thing there. I will never forget it. All the money the Puente people gave me was $8,000.00, and I built a pipe line and put in all those wells, and the plants and everything, paid up all the debts; and all I had was $8,000.00 to do it, and **[380]** I did it out of the production. The first well was a producer and the second one was bigger. That is something I will never forget. Those wells that I had charge of at Puente were sunk under my advice and direction and as a result of my examinations of the surface.

I made an unfavorable report of my examinations in New Mexico because of the horizontal condition of the formation there and erosions on all sides of it. If there was any oil in there, it must have run out, a great deal of it; and I so reported. I understand that recently they have gone in there and possibly found the sand below the formation I have mentioned that is producing oil now.

I next went to Kern County. There was no oil field there then. Mr. Blodgett asked me to come up and I went to Bakersfield. I think I first went out on Kern River, about 3 or 4 miles from Bakersfield, and looked at a little outcropping that was across the river, and think I reported to Mr. Blodgett that I would rather see the Sunset field before I made my report. I then went to Sunset, this was in 1889. I was there about 2 days the first time. I reported to Mr. Blodgett that I was very much impressed with the Sunset croppings and formation and believed that there was a heavy oil certainly existing in there. As a result of my advice, the development work was begun under my control and was not successful. They got into trouble, and a year later they got me to go there and get them out of trouble, and I stayed there for eleven years. I think their lack of success at first was largely due to trouble in the mechanical end of the work.

When I went there in 1890, we started two drilling rigs. We found oil in every one of the first three wells. They were drilled on Section 28 at Sunset. I

think there were probably 50 wells sunk there under my direction or advice. That was [381] not a commercially successful territory. Blodgett, Beale, the Company, wanted me to drill those shallow wells to get a thick heavy oil which they called liquid maltha, and let the light oil alone. They wanted this heavy oil. They were in the asphalt business and the shallow wells were drilled near the outcrop. I told them that we could go out farther and get more oil. They wanted the liquid maltha for the purpose of flexing hard asphalt. I would have given anything in the world to have been allowed to go down further and drill a well where I ought to. I knew where I ought to go, but they would not allow it. The shallow wells were profitable at the time with asphalt at $30 a ton, but subsequently it went down to $10 a ton and that of course made a difference. After asphalt went down, wells began to be sunk further away from the outcrop and got lighter oils. Since that time, some of the territory has been very profitable. Some of the wells for lighter oil were sunk under my direction and proved successful. I drilled on Section 35 four or five wells that would do anything from 75 to 100 barrels. I drilled the Monarch Oil Co.'s wells, one or two. I drilled the Occidental. The Argoyle. I must have drilled 10 or 15 wells in that light oil. That was a very light oil that could be shipped in tanks and piped. And I drilled the Pittsburgh, that is as light oil as they have in that field with a gravity of 19 or 20. I didn't have charge of wells for other people besides Jewett and Blodgett. Myself and different employees

were helping everybody out. And it was really forced upon me to drill all the other wells. I drilled for nearly all of the people in there. And I always advised people to get out and get in there.

The first wells sunk by Jewett and Blodgett were close to the outcrop, not exactly on it.

I ceased to have active operations in the oil field about 2 years ago. I left the Sunset fields in 1901. At the [382] time I left there, the wells had gotten out from the outcrop at Sunset approximately a mile.

After I left Sunset, I went to Colusa County and drilled 2 or 3 wells there by contract. They were not successful and were not started on my advice. They were started before I went there. F. M. Smith had expended a lot of money there on the advice of a party who told him to drill for oil and he wanted a well drilled there and I was recommended and went to him and made a contract. I drilled wells 1700 feet deep. It was not sunk as the result of my original investigations.

I first went to McKittrick in 1890 with Henry F. Williams. Jewett and Blodgett then had some man working there mining asphalt and melting it in kettles. Later on, I made a discovery of a large asphalt deposit about a year after the road was built in there, I think in 1890. I do not remember the direction of that deposit from McKittrick. The asphalt was in the McKittrick Hills.

When I examined the formation in the vicinity of McKittrick, I found it very confusing, broken up, and

the asphalt deposits were to my mind an indication or proof of a leak. All formations that lift up to the surface may be very uniform and unfaulted for miles. They would still crop out, you would still have your evidence; but where there is a cross section of faults, then it is bad. I found little cross sections of faults towards the Santa Maria Springs, but rather northwest of McKittrick. I do not remember how far.

I examined what is now called the Buena Vista hills several times during that period. At that time, I dindn't necessarily come to the conclusion that the Elkhorn Valley lying between the Buena Vista hills and the Elk hills was a syncline, for I hadn't determined the fact of the uplift in the other hills. But after subsequent examination of both Buena Vista hills [**383**] and the Elk hills, I made up my mind there was a syncline between the Elk hills and McKittrick. I didn't find an anticline in the Elk hills.

I was familiar with the country immediately surrounding McKittrick for about 11 years. I was over it all the time. Every few weeks there would be a trip to some place until the depression of oil. Then I quit the examination. We had more territory than we knew what to do with.

I had charge of the Union Oil Company lease in the vicinity of McKittrick which was leased for oil and asphaltum, but we knew that we could not produce oil to ship at a dollar a barrel and make any money, but we could take the oil and asphalt out of it and get $30 a ton and make money. During that entire time,

I didn't have charge of the development of oil wells there. But I, at several times, advised the development of oil in between the Elk hills and McKittrick. I do not remember the number of the township. I told them I thought we would get the biggest kind of a well over there if we would just sink it down on Section 36.

I didn't at that time come to the conclusion as to the depth we would have to sink. That would be out of the question. I never heard such a question asked before. It would be far from an experienced man's ideas to think of such a thing. There is a gamble in the oil business and we are willing to go just as long as the string will let us or the money will let us, and often go very deep; and I do not believe that I ever heard an expert oil man or a geologist ask the question before what he thought of depth, because it is so utterly foolish to think that man could tell anything at all about the depth. It is not impossible to tell the depth. You might see you were in an oil zone, and you would be very unsafe to say that you could not get it within a reasonable depth. I thought we could get it within a reasonable **[384]** depth on Section 36. I didn't think anything about how deep we would have to go. I felt just as we did at Puente. My man gave it up and said—"Well, we will give this up," and I said—"Well, we still have got some string left on the spool and we will go down." And we got it. Now the depth with an oil man never cuts any figure until he can't go any deeper. And he cannot tell. I

would not to-day, myself, on a new field. It looked to me to come inside of reach or I would not have advised it. I believed we could reach it within 3,000 feet. I thought it could be reached sooner than that. I don't think it was ever reached.

Geologists, scientific geologists—Le Conte—taught in some school that there was no oil in California, and gave a good reason for it. I know that you can get all the advice you want from geologists and from Bulletins that this is so and that is so, but you cannot prove it until you put the drill on, and the drill has shown exactly what practical geology is. The drill has shown that it is very unsafe to say that there is not anything over there in those hills today at a reasonable depth.

As a result of my long experience and operation and practical work in the field, I have not come to the conclusion that the opinions and theories of scientific geologists are entirely reliable. I have come to this conclusion that a lot of Bulletins that were written in those days, without the history of drilling that has happened since then, have proven that the geology of that date was not the geology of to-day. Geologists in those days, like Le Conte, made predictions that were not true; but geologists since then have found out their mistake and don't do it. I say, a geologist will say all those hills towards the Elk Hills and that whole country "There is good oil territory," but as to the depth, I don't see how they can tell. They endeavor to tell, but the drill is the proof of it.

As a practical geologist, I would say that scientific conjectures with reference [385] to the depth of formations have to give way to the actual test of the drill. Under some circumstances, the depth of a formation at a particular point can be determined. Suppose there is an anticlinal exposed, and sand is exposed, pitching 45 degrees and one is at the exposure; he can measure back 45 degrees and at a thousand feet he will go a thousand feet to get it. A geologist finds that out; he measures it; he can tell. But I say that a man—for instance, here is a formation pitching 45 degrees, and bye and bye, the drill shows it is not 45 but 30, and bye and bye the drill shows it is only 15—can geology tell that? Yet it is so. Therefore, wouldn't it be dangerous to condemn the Elk Hills on the question of geology? That is the test of the drill. The drill might show that we had started out at an angle of 15 degrees, that later on increased to 20, to 30, or to 45. The geologist might be a bad geologist. Le Conte was one of them.

I have not had occasion to examine the United States Geological Survey Bulletin No. 406 entitled "Preliminary Report on the McKittrick-Sunset oil region," by Ralph Arnold and Harry R. Johnson.

I think the statement on page 210 of this Bulletin: "Assuming the thickness of the McKittrick formation to be about the same in the hills as it is in the Midway and McKittrick Districts, that is, between 1500 and 2000 feet, it seems probable that at the axis of the Elk Hills anticline, the oil-bearing zone is from

900 to 1400 feet below the surface,"—is pretty safe. They saw the anticline, I didn't. They should be able to tell.

It cannot be safe to assume that a formation at some other point of a particular thickness will continue the same thickness until it has been tested with the drill. Here is an instance. The Union Oil Co. drilled a well out here 2000 feet deep, and condemned a great big territory. Mr. Doheny, who didn't know anything about the business at all except as mining, concluded [386] that he found a fault. He went the other side of the fault, within a stone's throw of this well, and the result was that he got a great big well, sold the product to the Santa Fe, and afterwards sold out to the Santa Fe and made a great deal of money. Those things happen. I would not care, if I had an idea that the formation was there and that ear-marks were there, whether the Associated Oil Co. went down 4000 feet or whether they went down three feet and a half—that would not cut any figure whatever. They might get a water well. Water streaks go through any formation. That is why the oil business is a gamble. It is because there is no man, geologist, expert or anything else, who can tell you where these faults are. There may be a world of oil there; there may be a tight streak of sand filled up with clay that won't let the oil through, and you might drill right into that spot. You cannot look down and see; you may be in the wrong place. But by reason of being unfortunate and getting in the wrong place, that don't

test the territory. It takes several wells to test the territory. That well of 3000 or 4000 feet would not cut any figure with me at all. The proper test of a territory is more than one well.

Well, I would hate to put my money up on a fellow that was not a practical oil man. He is a great deal safer, and his judgment better, than the fellow who has not had any experience. They have got to know where there is not any oil, anyhow—that is, in this way, you want to know the bad places to keep from. Here is property—there is nothing there until you drill a well.

Q. That is, until you have drilled the well, it is merely a gamble, as you have expressed it?

A. It is a gamble as to quantity.

Q. Isn't it a gamble as to the existence of oil?

A. No.

Q. Never? **[387]**

A. I don't think so. I have never, in an experience of fifty years, drilled a well that I didn't get some oil sand, where I thought it existed before I started the well, in California. Back of east of course you could not tell, but in California you have got a chance to see. You can go in on the edge of your formation and form an opinion; you can follow that out. Now, I have been pretty lucky—maybe luckier than a good many—but for others, in the employ of other people, mostly, in my life; and my experience is it is unsafe to say, "No; there is not any oil over there," because it might be there and the evidence is there that

there is. The evidence was there anywhere—Elk Hills and Buena Vista Hills is the fold and uplift; I didn't see any anticline there. I was there several times. It might be there. Those geologists examine things pretty thoroughly, and they have found it if it is there, and possibly I didn't see it.

Q. Now, what was the direction of the axis of that fold that you found in the Elk Hills?

A. Oh, an uplift, folded—just simply rolling over.

Q. What was the axis—what direction?

A. Dipping towards the river, the Kern River, and then towards the McKittrick field, just folded—just as if it was dipping away from McKittrick, like that, and then come up here, and folded, and go down again.

Q. How great a fold? At what angle?

A. Oh, I couldn't tell. I didn't examine it carefully enough for that—the angle of it; but it was folded.

Q. Did you make any determination as to the probable depth of the overlying formation, covering the oil formation?

One of the hardest things ever asked of an oil man is to determine the probable depth of an overlying formation covering the oil formation. Intuitively I know an apple is an apple; [388] and I could not analyze it, but I know it when I see it. There are lots of things that you can see but could not explain; you know it though just the same. Take a man 50 years in the business and he looks at a thing. Without

doubt, it is the hardest thing in the world to prove facts without the drill. The opinion is there. My opinion was that that was a prolific oil field, and if I had had my way, I would have drilled there in preference to over at the McKittrick side.

I did not at any time make any determination as to the probable thickness of the overlying formation covering the oil formation in the Elk Hills, and in advising with reference to that territory, I never made any statement to the persons who made locations there as to the probable depth they would have to sink their wells. I am sure that I did not say anything to them about it being deep territory. I told them to get a rig that would go deep. I believe I got a rig ready for it but didn't use it. We had the rig over on 34 and I told them that we could get that rig over there, but I suggested that we had better get water over there first to furnish the boiler. I don't know what happened. Something delayed it and then came the low price of oil and they said they didn't have any money and they didn't pay much attention to it. I was getting ready to get out of there myself. I didn't pay much attention to the Elk Hills in a particular way.

My attention was chiefly directed to the vicinity of McKittrick, and a great portion of the time in locating a lot of land in there, looking over it with the idea of locating it for mineral locations. That was within a radius of 3 or 4 miles of McKittrick.

I crossed down into what is called the McKittrick

Range toward Midway and Sunset many times and am very familiar with most of it. On the line of outcrop along that line from McKittrick [389] to Sunset one side of the formation is in and out. The preponderance of evidence there is that it is along the whole length from Temblor to Sunset and to the San Emedio Mountains. The formation lying West and South-west of the outcrop toward the Temblor Range changes in there. It is mostly shale, and a little behind that, overlaying it, is sand rock. No oil sand, sandstone.

As you go further into the hills I made one or two tests in there on what is called the south side of the anticline, and we went through a little shale about 300 feet, and we got out of the shale and struck a soft sand rock, and we got wells that flowed water. That was on the South dip looking West on the strike. The formation lying to the West was the oldest.

We made some determination from the indications or sections of the ground as to the thickness of the overlying formation from McKittrick toward Midway. But those opinions on measuring the outcrops or rather, forming opinions on the measuring of the outcrops, we found to be by experience very misleading. Sand is plastic and thins out in the outcrop. In going over it, it pinches and thins out. The sand stretches over that fold and that is the reason for the fault—it is thinner. In other words, these formations were horizontal and fell down by the shrinkage —not an upheaval. They fell down and broke the

weak parts; and we know from experience and not from theory that those outcrops were thinner than those deeper in the formation. My practical experience in the field leads me to believe that this was probably due to a subsidance and not to an upheaval.

As to the Elk Hills, there was evidence of an upheaval or fold. Naturally, that formation didn't spill over there and show a lot of asphalt, and therefore it looked to me better than the McKittrick side because it was intact and the oil was there, in my estimation, because it had not wasted. I had no reason to believe that it could get away from there. There was nothing to [390] show that it could, and it must be there, because it hadn't got away. On the edge above, it was quite small—from the pitch of the formation, I judge it would be too deep in the valley to reach it.

Out in front of the Sunset was the Buena Vista Hills and I always told them that I believed more in the Buena Vista Hills and the Elk Hills than I did on the edges of the Sunset and McKittrick, from experience in those fields, and that is why I formed that opinion.

I believed that in the valley it was very deep to the oil formation.

I was unable anywhere to find a section of stratification or formation from which I could determine in my own mind the probable thickness of the overlying formation; but what looked good to me was, there was no evidence that it got away—that it was cut out.

In my opinion, the upheaval in the Elk Hills was probably caused by the shrinkage of the earth. As the formation is getting older and cooling off, it goes down here and turns up at any place and folds along. I believe that is accepted by a great many men that are well posted in formations to be a very good theory and, perhaps, correct. As to what I mean by referring to the Elk Hills as being a fold, I will say that on the McKittrick side of the formation it is dipping at an angle of about 30 degrees, but the valley is nearly level. Now that was new to nearly everyone to find a formation dipping out into the valley. But I concluded that that formation must, to a certain extent, conform to the shape of the valley, or else the valley could not have been there. It would have been uplifted hills like all of that country is if it was not that way; but the depth is hard to determine, because there was no way of determining it without drilling a hole. But at the Elk Hills you could see it lifting **[391]** up, with no evidence of faulty conditions like a running away of millions of tons of asphalt. That was why I thought it would be a good place to drill a well, because of that uplift. That is the difference between an anticline and an uplift. That is folded without breaking it. The anticline is broken into and goes this way and that. The distinction I desire to make between a fold and an anticline is that the anticline is a broken fold according to my way of determining it.

My opinion is that there was but one fold in the Elk Hills.

The Elk Hills country showed to me to be an uplift.

No well was started in any portion of the Elk Hills during my time there.

When I started the men out to prospect for asphaltum, I didn't tell them what particular territory to go into. I know two of them were working in the Elk Hills. I saw indications of asphaltum there on the West side down near the railroad. Aside from those, I saw no indications of asphaltum there. I have never seen indications that appeared gray on the surface and dark beneath it.

I saw oil sand pretty near the summit of the Elk Hills. I do not remember the section.

I have a good feeling for the railroad people and everybody else, and I am here an unwilling witness, and I don't want to make any mistake, and I give the testimony as I saw it. I didn't post myself in any way and don't remember all the directions there or the contours.

The oil sand I saw was on top. It seemed to be a blow-out of volcanic matter—not volcanic matter, but as if it was a chimney. It was on the ridge.

I am familiar with the Miller & Lux Headquarters Ranch. I have been there and drove into the Elk Hills from the ranch. **[392]** I should judge the blow-out was about a mile and a half from the ranch, West I think.

It was not the blow-out from which I made certain tests. I got samples in many places. I was there 2

or 3 days and I was there to examine and made examinations of that country for at least 2 miles in extent—all different places. The samples I took at two different times on two different days and perhaps three. The territory from which I took the samples covered a mile, anyway, if not longer, about parallel with the strike of the country. I think I got some of the samples in a gulch. I got some on the hills. I found no asphaltum, but I found a sand that was percolated so much that you could put it on a fire shovel and heat it a little and it would blaze. And in making the chloroform test, you could get particles of oil.

You could get oil from the territory I examined on those occasions. At the present time, I am not able to give the exact measurements of the territory where I got the samples or the exact sections.

I was there and authorized the location of the lands after an examination. I didn't make the locations myself. I walked over the ground and made a map and had information about it and directed the men where to make the locations and build the monuments. That was in 1898 or 99 as I remember. The locations were undoubtedly made with reference to section corners.

I found through the Elk Hills many evidences of gas. That was shown by the peculiar look of the formation that has been attacked by gas. I don't know as I can describe it. It is a grayish color and has a glassy appearance, and manifests itself everywhere where gas is escaping. My first impression

when I saw this place was that there was evidence of gas there. One or two places we put a can over it and let it accumulate, and then lit it. That was over near the apex that I spoke of that had a [393] hole in it. They and the oil sands were all there together. And as far as an oil sand is concerned, it cannot be said that we found an oil sand—any sand is oil sand that has got oil in it, and any sand can have oil in it if the oil attacks the sand or percolates it. It is not necessary that that was an oil sand. That sand might be any sand that is attacked by oil that comes through the crevices. There was nothing to indicate that that sand contained an oil reservoir. It might have been. The gas escaping there would be evidence of this: that the gas would come—it was not washed—I can tell a washed gas by the smell of it. It didn't come through water, and it was evident that it was pretty near the home where it belonged. The occurrence of gas would be an indication of oil. I didn't think it necessary to make a test to determine what kind of gas that was. It was not marsh gas. I can tell the difference between marsh and all other kinds of gas without a test. I could tell it in the night with my eyes shut. The evidence of gas is an evidence or indication as to the character of the formation; if it it corroborated by the contacts. It has no significance as to the uniformity of formation; it is sometimes evidence of disturbed formation, a broken or faulted formation. I have sometimes found that to be a fact in California oil fields.

RE-DIRECT EXAMINATION
OF W. E. YOULE.

I know the Standard Asphalt Company. I was it's Manager and may have held some stock and been an officer in the company. I don't remember that. F. S. Douty, Secretary and Treasurer of the Pacific Improvement Company, and Edward Hayes, his assistant, were also officers in the Standard Asphalt Company. I think Douty was it's President and Hayes it's Secretary.

The affairs of the Standard Asphalt Company were undoubtedly controlled by the Pacific Improvement Company. They [394] furnished me with passes and I made a weekly report to the P. I. Co. at San Francisco. I think when the Standard Asphalt Company started out, it and the Southern Pacific R. R. Co. had offices at 4th and Townsend in San Francisco.

Money was spent on the location made on my recommendation in the Elk Hills; they built roads and did assessment work. They intended to go in there and I got a rig ready to send over, and some way they fell down. They said money was getting scarce and oil was cheaper and transportation hard to get.

There was no evidence of any disturbed formation in the Elk Hills. There was very little disturbance there that I saw.

From my observation and examination in those hills, I would not have advised that they be sold for their agricultural value, and the majority of geologists would not have so advised. I most assuredly

would have advised my employer to acquire the lands at a price in excess of their agricultural value because of their oil possibilities. The lands had no value other than for the purpose of drilling for oil.

As to whether an ordinarily prudent man would be justified in the expenditure of money for developing those lands, including the lands in controversy here, with reasonable expectation of developing a paying oil property, I would say that I would have advised any company to furnish the money to the extent of $50,000.00 or $100,000.00 to develop that country.

RE-CROSS EXAMINATION OF W. E. YOULE.

It would be hard to say how deep a well could have gone in the Elk Hills for $50,000.00. I have taken flat contracts with the P. I. Co. and Borax Smith for a good deal less money. It cost me $7,000.00 to go about 2,000 feet for the P. I. Co. I drilled a well in Santa Maria 3,000 feet that cost $4,200.00 about **[395]** 3 years ago. I had had no experience in that field to the extent of $50,000.00 in one hole. I could drill 3,500 or 4,000 feet for $50,000.00 or less.

I did not contemplate having to go that far. The oil business is a gamble. It is not like farming. You just bet that you don't go down that deep and that territory was good to have bet on. If you win once in four or five times, you make a lot of money. That is the reason why I would have advised people to spend $50,000.00 or $100,000.00 there. I wouldn't advise

widows and orphans and dishwashers and cooks who could not risk money; but if you wanted a chance to make a million dollars, I would pick the Elk Hills quicker than any piece of land in there, because the formation justifies what I say. The reason that I say it takes more than one well to determine the character of a country is that experience has taught me and others that we might drill a well in a faulty place, as I have described, and not get anything, and changing the rig around fifty feet, probably get a well at 800 feet when you didn't get it in the other at 1500 feet, and didn't get anything. It takes more than one hole. I know a man that had sixteen dry holes and made a million dollars after that. He got oil in the same country. He crept out and got it.

The fact that oil is found on one section is not evidence that it may be found in every section in the township; there may be kidneys. Oil is not contained like a river under ground, but in kidneys. While you are in the oil sand all the time, we know by experience that there are dry holes drilled in oil sand. Had those been drilled, the first one, two or three, you might condemn the territory and throw it out, the same as the Associated did. It might have been possible to make a well for the purpose of getting the land cheap. I have had fellows do it on me, who owned the ground, and get the sand and wouldn't **[396]** tell about it and you had a dry hole.

The discovery of oil in one section or quarter section does not indicate to a practical oil man that oil

will be discovered in every section in that township. It implies this,—if you get oil in this section, experience has taught us that oil is not just in that little space in that well, but that it has a direction somewhere. And immediately you will find oil men locating and acquiring lands quite a distance from that well. You find that among oil men because experience has taught that there is a direction to that oil vein. That is why I advised the location of several sections. There was an uplift and fold and nothing to indicate that the oil had gotten away. It was not because of any wells but because of the surface indications alone.

There were no oil wells at McKittrick at that time. I think the first well came in in 1902.

In forming my opinion as to the Elk Hills, I don't think I thought about the indications of asphalt at McKittrick. My whole opinion and my whole thoughts were upon the possibilities of the Elk Hills as an oil field. I was an oil man; not an asphalt man; and I believed that the asphalt evidence was evidence of a great big field of oil in that country.

The McKittrick side was dipping towards the Elk Hills and the asphalt at the McKittrick side had faulted and broken; but on the Elk Hill side it was not broken so much but folded up, and I made up my mind that there was a fountain head of oil for all this alike. **[397]**

CHARLES W. LAMONT, a witness called and sworn on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION.

I am 52 years old and reside in National City, San

Diego County, California. My occupation has been mining and prospecting since the fall of 1879.

I went over into the Elk Hills in the fall of 1899 with my partner, Si Drouillard, who was an old prospector. He was pretty familiar with that country, had been there a long time.

I know what they call the Temblor Range.

When I went to the Elk Hills with Drouillard, we discovered a blow-out of what we considered brea at that time, an indication of oil, and found a gas blow-out and shale, brown, black, blue, white, and found gypsum and Fullers Earth and a few other conglomerations in there, almost due South and a little West of Miller & Lux Headquarters Ranch. The largest indication in the bunch we found was on what afterwards proved to be Section 32, Township 30, Range 24. Tom Baker, Jeff Packard and Drouillard were associated with me then.

We picked some of the shale and sand where the blow-out was in Section 32. It was decomposed shale and there was strata of oil sand there, and the shale was very hot. There had been a rain before then, a week or so, and while the weather was cool and the day was rather cool, that formation, after we got under the surface, was very hot. In fact, it was too hot to handle pleasantly. The indications of oil there was just the oil sand and that shale that we know goes with an oil formation.

On the North and along the line of contact from McKittrick towards Sunset right close to the lake, we

saw live oil coming out of the ground, floating on the mud and water, towards the Easterly and Northerly end of the Elk Hills. **[398]**

After seeing these indications of oil, I located seven sections of land right in what I took to be the anticline along there, and then I formed another company and located several more sections. I don't remember how many. The first seven sections located were located Westerly from Section 32, the original discovery, and extended over to Township 30, Range 23.

Besides the first bunch of associates, my associates were Jewett and Blodgett and other members of the Kern Co. Bank—N. C. Farnum, Bert Packard, Roper and several more. I do not remember all of them.

I concluded that Section 32, where the oil sand was, was the top of the anticline. I have seen indications of oil in Section 14, 30-22, where the railroad goes through, but I never examined it closely. It looked like oil sand and brea. It would be what I took to be the West end of the anticline at that time.

I certainly regarded the Elk Hills country at that time as good oil territory and the only conclusion I have come to since then is that it was better than I thought it was in the first place. I have never had any reason to think otherwise, on account of the development of gas which I didn't think existed in such quantities in that formation.

I know John Jean. I took him out there as a sort of agent for some of the citizens of Bakersfield to report on the ground, and in consideration thereof he

was to have a claim, and he agreed to keep the find quiet because it was not generally known that there was oil in there.

The work we did in support of our locations was principally surveying and road building. We ran some cuts into the bank of the gulch that was there and dug a hole. We made different roads—if I remember right, it was about 5 or 6 miles of the main road and then little branch roads as we needed to go around in different places. If I remember right, we started building the **[399]** roads early in 1900 and contined for 5 or 6 years and kept up the locations continuously most of the time—not entirely during the years 1903-1904. Some of the rest of the company went out and made locations, but if I remember right, I think the last time I was out there was in 1903. We then held two sections of the ground.

I have been over most of the Elk Hills in 30-24 and 30-23. I don't think it is available for agriculture. Never found any water there. Sometimes in an extra good year, there is a little grass on the South slope, but in other years, there is nothing. I don't think there is any value there except for oil, gypsum and Fullers Earth. I offered to rent our ground at one time for $10 a section to a sheep man, and he wouldn't give it unless we would agree to put water there.

CROSS-EXAMINATION OF CHARLES W. LAMONT.

I first made locations in the Elk Hills the beginning of November, 1899. The first location was on Section

32, Township 30, Range 24. I located that because in my judgment there was the best indications of oil. I located it for oil and gypsum. I couldn't tell how much gypsum was there. I never tried to develop that no more than to dig into it. Never tried to market it. I didn't try to find out whether I could market it or not. I was not interested in that part of it. I was interested in the oil and located it for oil. Gypsum was included in the notice. It was located for oil along with the other minerals that the ground contained. I would have located part of it for gypsum but not as much as we did locate.

I discovered oil sand at the blow-out I have mentioned. Aside from that, I made no discovery of oil on any of the claims that we located during the period I held them. I never marketed one cent's worth of material, Fullers Earth, gypsum, clay or any- [400] thing else from those locations. Held about two sections for ten years. I didn't do any assessment work on them. This was not because I did not consider them worth sufficient attention. I was broke.

REDIRECT EXAMINATION OF CHARLES W. LAMONT.

There was an oil depression from 1901 lasting for several years, and it was just as good as insulting anybody to ask them to put their money into it at that time. That was the whole reason for our failure to try to influence people there or get money to carry out the locations.

RECROSS EXAMINATION OF CHARLES W. LAMONT.

The depression in the price of oil was the cause of the failure to get people interested in our locations, and at that time gypsum was so plentiful around there that it wouldn't pay to put it on the market from that piece of ground unless we could develop the country and put roads in there. Up to that time, we hadn't put roads into the gypsum beds. We didn't develop them so that we could ride down to them in a wagon because we didn't want to use the gypsum beds at that time. We were saving them for the time when we could get them out of there. We didn't develop the ground for either gypsum or Fullers Earth and the depression in the price of oil prevented us from developing it for oil.

JOHN R. SCUPHAM, a witness called and sworn on behalf of the Plaintiff, testified as follows:

DIRECT EXAMINATION

I reside in Oakland, California. I was employed by the [401] Central Pacific Railroad Company, the Southern Pacific Railroad Company, the Southern Pacific Company, the Western Development Company, and the Pacific Improvement Company. I was a civil Engineer at that time.

I was employed by the Central Pacific Railroad Company in the fall of 1865 and was employed as assistant engineer on the Central and Southern Pacific Railroad Companies and served in that capacity for 8 or 9 years in the usual affairs of an assistant engi-

neer—surveying, calculating quantities and directing the construction of work and the like.

About the year 1874, I was recalled from the field work and had my office in the Engineering Department, and was used as a sort of consulting engineer by the directors of all the companies, and from that on I served them in that capacity, reporting to the board of directors who requested me to make an examination or a report.

The directors of the several companies were Leland Stanford, Charles Crocker, Mark Hopkins, C. P. Huntington, afterwards D. D. Colton, Judge F. B. Crocker and Col. C. F. Crocker. I think A. N. Towne was afterwards a director.

Mr. Towne was the General Manager of the Central and Southern Pacific Railroad Companies.

As consulting engineer, I came into contact with the directors frequently in examining various subjects that they wished me to report on. I examined mineral lands in which these companies or these directors on behalf of these companies were interested. I examined and reported on the Carbon Hill coal mines in the State of Washington, afterwards purchased by the company; I examined and reported on the Green River coal mines and the small outcrops of lignite coal in California in Santiago Canyon purchased by Mr. Crocker afterwards; and at Hatchett Creek, Shasta County, and in Arizona and Texas, at Eagle Pass—I had work done **[402]** there. I had lines run into some coal fields in Northern Sonora

that I thought was of some importance, and in many other places. When I say that I had a line run in, I mean survey run in.

I had the company, with the encouragement of Governor Stanford, convert their principal stations into meteorological stations. I supplied them with rain gauges and thermometers and wind gauges and got up a system of reports which, I believe, has been maintained up to the present time.

I made a report to Governor Stanford on the artesian water prospects in the San Joaquin Valley—especially the southern portion of it reaching into Kern Valley—and had a well sunk at a point about two miles south of Delano station, and at something over 400 feet got a splendid artesian well, which was the first artesian well in that valley. The well was south of Visalia and north of Bakersfield.

I have been in the engineering business continually since that time and that included the examination of lands for their mineral value.

I had a conversation with Mr. A. N. Towne, General Manager of the Southern Pacific Railroad Company, in 1887, in which he asked me if I thought the asphalt deposits west of Bakersfield would justify the building of a road in there; and after some general conversation about it, I told him that I had not seen that particular portion of the strike where the asphalt cropped out and manifested itself, and he said: "I think you should go and see that on your way south, and when you come back, come in and report to me."

I went to Asphalto and saw all the asphaltum outcroppings and deposits in that vicinity and I saw where they had been extracting asphaltum in trenches and pits, and saw the motion of the flow, and made various experiments with it. I went to the southwest into the pass between the hills and examined the country lying to the southwest. I was convinced in my own mind as soon **[403]** as I saw the escarpments there that it was oil land and that we would find seepages and manifestations of oil in those hills to the southeast. We drove down between the Buena Vista Hill on the east and what is now called the Elk Hills about 7 miles into a sort of gulch or arroyo in township 31-23, and went 2 or 3 miles into the hills into township 30-23, about two and a half miles in that township. I then travelled to the south from that point coming to the head of another arroyo. The next day we went about 4 miles further to the southeast and walked over the hills. I think we got into what is now section 32 where I found the best oil seepage that I had seen yet, although I had found it in these other arroyos, but that was the best manifestation of all. The sandstone at the southwest edge of these hills dipped decidedly to the southeast, showing that we had passed an anticline or the presence of an anticline. We found the oil seep in township 30-24, I think, by estimating the distance that we had gone to the southeast.

I examined the ground I had passed over as carefully as I could and noticed shales and the occasional exposure of sandstone, and was studying carefully to

find asphaltum outcroppings—brea, as we called it then. I thought the land was underlaid with oil.

On my return to San Francisco, I described to Mr. Towne what I had found there at Asphalto in the outcrop of asphaltum, and the sources of the asphaltum. When I had finished a description, I told him that I thought these hills lying to the east were overlaying the oil measures, and that they would turn out to be very important in their future development. I refer to what is now called the Elk Hills.

While I was discussing the matter with Mr. Towne, I think he had sent for Col. C. F. Crocker. Crocker came in and Towne, looking up, said: "Scupham thinks those hills south of Miller & Lux ranch are overlaying an oil deposit," or words to **[404]** that effect. Mr. Crocker said: "Well, it is a good thing that there is some value of that kind in that land. Otherwise, it would be a very poor asset for the company." He was standing up while that was being said; and when we were discussing it, he came and sat down—the three of us together, and he asked me why I thought that, and I went into the details explaining why, and discussed the matter with him pretty thoroughly.

I thought at that time that the Elk Hills were valuable lands, but the lands lying to the west and north were of much less importance. I stated that to Towne and Crocker, perhaps, without any explanation.

I was acquainted at that time with Jerome Madden

who was land agent for the Southern Pacific Railway Company, and when I left Mr. Towne, I went into Madden's office and found that the land in this township (30-23) was not all surveyed. About two-thirds of it, the southeast two-thirds was unsurveyed.

I told Madden that I thought that was going to be valuable land, and that it was overlaying an oil deposit, and that they ought to have the survey completed there so the land could be selected. My recollection is that he consented that that was the thing to be done. I had no authority to direct Mr. Madden to do anything. It was merely a suggestion on my part. Steps were taken at that time, or shortly after, to have the land surveyed. I had the conversations I have spoken of with Mr. Towne and Mr. Crocker with reference to the lands known as the Elk Hills in 1887.

CROSS EXAMINATION OF JOHN R. SCUPHAM

In my talk with Mr. Madden, I found that the territory I visited in the Elk Hills had not been surveyed. On my second trip to the Elk Hills, I went into what I calculated from the direction and distance we had traveled, to be 32, Township 30-24. That **[405]** section was not marked. The outline of the township had been surveyed on the west and south, but it had not been sectionized. I don't know exactly when it was surveyed. It had been surveyed by 1893. The portion of the township we were in had not been surveyed when we were in there.

In the conversation with Madden in 1887, I told him that I thought 30-23 should be surveyed because of its oil possibilities.

I think an application was made for a patent to that land in 1893, but I am not perfectly sure of the time.

I observe from Government's exhibit "E", a certified copy of the township plat of 30-23, now called to my attention, that the township was not surveyed until 1901. I didn't have it in my mind that way. It was not made as a whole until 1901. The east boundary at sections 24, 25 and 36 were surveyed in 1893.

It appears that Mr. Madden didn't immediately proceed to adopt my suggestion so far as obtaining results are concerned.

I was not later called upon by Mr. Towne, nor any of the officials of any of the railroad companies, to make a further investigation of this territory. I did not prepare a written report of the trip I have referred to. I made the report verbally. I had a talk with Mr. Towne immediately after I had had the conversation with Mr. Madden. Madden was not present during my conversation with Towne.

I did not go so much into detail in my conversation with Mr. Madden as I did with Mr. Towne. I told Mr. Madden that I thought this territory was going to be very important for oil on further development, that I had seen seepages in what would be covered by this Section 30-23. I had seen them at the head

of the arroyo and at one or two other points. It was just faint manifestations of oil in 30-23, I think.

I was gone five days on the occasion of that trip and was two days in the hills. I was with William Corral who is **[406]** dead now. The oil sand was at the head of a little arroyo. It was at the bottom where the stream would run in wet weather, about 12 feet above the bed of the canyon, as I recollect it, may be. There was a little stain on the other side. The oil sand dipped toward the Southeast and the strike was Southeast and Northwest.

Where we first saw the sandstone, the dip was to the East. We were going up the dip. It was nearly flat, but it rose a little in the direction we were going, North and East. On the other side of the canyon, the stain dipped towards the East and South. I had a general impression that the strike was to the Northwest. It was covered with surface material so that it was not clear on the lefthand side. I could not determine the dip at that point. It was covered with debris from the ridge. I think the dip was the same on both sides. I assumed it was. I went some distance beyond the hill, but didn't see where it came out. It pitched under the surface and was getting deeper. It might have been in section 32-30-24. It was revealed at several points, rising up on the hillside towards the Southeast.

I severed my formal connection with these companies in 1885, but I was still consulted by them—by the directors—after that in different operations until

within 2 or 3 years after that time, before 1890; and since that time I have been engaged in private practice entirely.

I was consulting engineer for the directors of the Southern Pacific Company. I cannot state the year that company began operating lines in California. It was some two or three years before the time I retired from active service as assistant engineer. Prior to that time I had acted as assistant engineer for the Central Pacific Railway Company on its lines as far as Ogden, and in the surveys beyond Ogden, and I also acted as engineer for the Southern Pacific [407] Railroad Company on its lines in the southern part of California and Arizona and New Mexico.

In 1883, the Southern Pacific Company took over these properties under a lease and operated the same, and at that time, the active operations were mainly carried on by the officers of the Southern Pacific Company. They were still directors in the other lines and still directing their affairs.

Mr. A. N. Towne began his career as General Manager of the Central Pacific Railroad Company. It was not my affair to get the exact status of those gentlemen. I was reporting to them.

After the Southern Pacific Company took over the properties, Mr. Towne was Manager of the Central Pacific line between Sacramento and Ogden. I don't know that he was paid entirely by the Southern Pacific Company. I don't pretend to know who was paying him. I don't know anything to the contrary.

The same was true with reference to the lines belonging to the Southern Pacific Railroad Company which had been taken over by the Southern Pacific Company under leases. Mr. Town retired from active work in 1895, maybe. I think maybe he died in 1896. He was in poor health for a number of years before he died, and the active management and control was in other hands during that time. He lived in San Francisco and was in Palo Alto on account of the climate for short intervals.

At the time I had the conversation heretofore mentioned, in 1887, with Jerome Madden, he was land agent of the Southern Pacific Railroad Company, and Mr. Mills was land agent of the Central Pacific Railroad Company at that time. Those two offices were entirely distinct. Mr. Madden continued to be land agent of the Southern Pacific Railroad Company for about twelve years after that time and was succeeded by Charles W. Eberlein about 1889 or 1890.

My entire report of the trip I have mentioned was made **[408]** in that conversation with Towne and Crocker, and I did not write any letters embodying any portion of that report and, so far as I know, it was not kept in any way that was at all permanent.

I was sent in that country to examine into the asphaltum situation. That was what took me there first. I was informed that some effort was being made to have the railroad constructed in there on account of the asphaltum production. There was no discussion at that time as to the development of oil

in that vicinity on the part of the officials of the company or by Mr. Towne; but he had in mind the asphaltum and that is what he called my attention to, to see if it was worth while extending a branch for the business that might be developed. He was inclined to be skeptical. In my report in that conversation, I went into details as to the quantity and quality—resources and asphalt—I was impressed with the great resources of asphalt at Asphalto in the vicinity of what is now known as McKittrick. I was not impressed with the possibility of the Elk Hills for asphaltum. I reported quite fully in that conversation with Mr. Towne with reference to the asphaltum and its possibilities for railway tonnage. There was a discussion at that time with reference to the development of oil, but not for its development for fuel for the railroad. I mentioned my conviction that the shales and sandstones in those hills were overlaying an oil formation and that there was not any doubt of it in my mind. Mr. Towne had been constantly in the habit of suppressing me, thinking I was too enthusiastic as to resources, and he took that stand in that conversation. He said: "Well, couldn't all these things be that you are describing and nothing underlying it?" I explained that the old formation would contain a certain amount of hydro-carbon, and if it was pierced at the right place and in the right way, it was sure to bring it to the surface. Well, we discussed it as men who were defending an idea, and the impression was very strong in my mind at that time. He was inclined to be sceptical.

I have no doubt but what Mr. Crocker and Mr. Towne were [409] convinced that it was an oil formation. It was Mr. Towne that suggested the matter of my looking up the survey in Madden's office. I think I finally succeeded in convincing Mr. Towne. I got that impression.

It is likely that I made some estimate as to the depth that the oil would be in, increasing depth as we went to the southwest; but it would be struck at a very reasonable depth where I had seen the seepage —what I said then was probably that it would be 800 or 1200 feet. I reached that conclusion as the result of the two short trips in the hills.

I had seen a good many oil wells prior to that time. In the year 1875, I think, I went with McPherson into the Moody Gulch in the Santa Cruz mountains and stayed with him two or three days examining their oil wells at that point; and also at Mr. Colton's suggestion, I went to the Pico Canyon to examine into the oil wells there, their depth and the formation and everything connected with them. He was interested in oil there. He was a director in the railroad at that time. I studied the thing somewhat. I examined that ground near Oil City at Coalinga. There was practically nothing there at that time except just a supposition. I was more or less an amateur in the oil business.

After looking up the matter of the survey with Madden, I went back to Mr. Towne a day or two later and reported to him that the land had not been surveyed.

Mr. Towne did not send anybody else in there immediately after I made my report. He did within a year or two. I don't know whom he sent. I suggested that Mr. Ireland, the State Mineralogist, had Goodyear as a field assistant, and I had employed Mr. Goodyear to examine the Cow Creek coal formation with me a year or two before that and I got a very good impression of him and suggested that it might be possible to get the State Mineralogist to make some research in that section. I got the impression that that suggestion was followed in a way and think **[410]** Mr. Goodyear went in there. I heard that some other person had gone in. I have forgotten who now. I remember the name of Burch, but I do not know whether he was the one that went in or not. I did hear that someone had been sent in for that purpose. I did not hear that his report was adverse; I got a different impression. I did not pay any attention to it at that time.

I thought the Elk Hills of far more importance in the vicinity of McKittrick because, looking at the matter in a particular way, the formation sloped from McKittrick to the southeast, and to the northwest and west the formation was faulted and flextured very much, and it was not so likely to be productive of oil as where the formation was more uniform in its slope. My impression is, and it is very likely, that that was discussed in my conversation with Mr. Towne. I informed him that the Elk Hills were better than McKittrick and that I believed that oil could be found in that territory.

It is a question of guessing what was underneath the ground and I would repeat what I said at that time, as near as I can recollect, that where you have the oil measures, they were contained in the large—that is, in a thousand acres—any amount of hydro-carbons, it might be concentrated within one or two miles in that area or it might be disseminated through the whole extent; but there seems to be a certain relationship between the amount of hydro-carbons and the amount of superincumbent materials in these oil formations. I said to Mr. Towne and Mr. Crocker that the oil did extend under there and it probably would be very important. I thought I knew, from the manifestations which I observed on the surface, that it did extend under there in paying quantities, but I didn't know it mathematically. The surface seepage indicated most positively that there was oil in that portion in the vicinity of the seepage. It was a fresh seepage. Such indication could not be found in an exhausted oil sand. That it was an active [411] seepage was not visible to the unassisted eye, but it showed freshness of the outflow of oil. The stain was a fresh stain. I could not detect actual oil, but the stain of oil was necessarily recent. There had not been a complete evaporation of it. I don't think that could be true in a bed of oil sand that was not productive, not with all the other manifestations accompanying it. The other manifestations were the heavily bedded shale and sandstone in succession, and the tight clays and other manifestations of oil forma-

tions. I was deeply impressed with the belief that it was a formation in which you could find oil, but did not actually find the oil; I found the presence of it.

I next returned to that territory in the autumn of 1893, I think. I went entirely across the Elk Hills at that time on horseback and rode down to the point that I spoke of before which turned out to be probably in section 32 of 30-24, and afterwards went south from there and then across the shores of Buena Vista Lake, and then back again on the Elk Hills. I was there one day.

I made a report to my associates as a result of that trip. I had a section of forest land in the Forest Reserve and some gentlemen suggested that I get lieu land for it and locate it in that section of the country. I did not do that. This was a private venture, and in no way connected with the railroad company, and my associates were strangers to that company. I was not an official of the company at that time.

REDIRECT EXAMINATION OF JOHN R. SCUPHAM.

It was about two years after I had the conversation with Mr. Towne and Mr. Crocker that the railroad was built from Bakersfield to McKittrick.

In connection with the determining of the artesian zone or basin in the San Joaquin Valley which I have mentioned, I had [412] occasion to determine at that time the depth of the water, and in examining coal lands, it was a part of my work to determine the depth of the coal; making an estimate based on the slope of

the strata and the point for a workable shaft. In a broad way there is a relation between the means by which you determine the depth of artesians basins and coal measures and that of oil measures or oil sands. The stratification of a particular section would govern in each case and that is why I say they are analogous.

In examining the seepage in 32, 30-24, I found no indication of a great waste of oil there. The seepage was very distinct, but there was not any great manifestation of it. It was considerably smaller than the waste around McKittrick.

My failure to use forest lieu selection rights in that section in 1893 was not due to my disbelief in the Elk Hills as an oil property. I had confidence in my impression by my trip at that time, but other matters governed me. I had a good offer for the land and sold it to Charles Doe.

On cross-examination, I said that the dip of the Elk Hills on the apex of the anticline was south of east, and that going up it was to the northeast. I account for that in this manner. I was observing closely the slight dip of the strata as we climbed the hills, watching the compass, and I found that the strata was rising to the north and east, and when we passed the summit and got near the head of the arroyo facing the other way, going to the north and east, I found that the dip—there was some dip south of east in the strata that showed at that point; and I assumed that that was a local flexure of a strata of the line that we happened to strike at that profile.

The Mr. Crocker referred to in my statement relative to the conversation I had with Mr. A. N. Towne was Mr. C. F. Crocker, usually called Colonel Crocker to distinguish him from his father. **[413]** Mr. Crocker was a director and I think Vice-President of the Southern Pacific Railroad Company. It might be Second Vice-President. During my employment, Leland Stanford, Charles Crocker, F. B. Crocker, C. F. Crocker, C. P. Huntington, D. D. Colton and A. N. Towne were directors and officers of the Southern Pacific Railroad Company and the Central Pacific Railroad Company with the exception, possibly, of Mr. Towne. He was an officer, but possibly not a director at that time. They were also directors and officers of the Southern Pacific Company and they controlled the stock or had nearly all the stock of the Western Development and the Pacific Development Companies but there were some other employees acting in an official capacity in those companies.

I have bought and sold oil lands in California. Before any development whatever was made in the Elk Hills, and merely for speculation purposes, considering the ground with reference to the known oil seepages and other conspicuous evidences which I have recited in the surrounding and adjacent country of oil, and from my experience in the examination of oil lands, I will state that the lands in 30-23 have a high value relative to other lands.

As to the value of sections 15, 17, 21, 23, 25, 27, 29, 33 and 35 of that township, I will say the lands I have been holding in the Sunset country—relatively the

same—near an anticline and land that is not recognized by anybody as being oil land, is yet held, by those who are offering to buy, at about $2000 per acre, and those who actually contract for it get a price as near $1000 per acre as possible. If I were selling the lands in the sections referred to, I would want to get several hundred dollars an acre, probably $1000 an acre.

The value is governed by other circumstances than the money value—the market value is governed by other circumstances than the real substantial value of the land. At that time, when **[414]** I examined these lands, the value of oil land was not well understood and it would have seemed extravagant for one to place a value of $1000 an acre on such land, and yet it was amply worth it because it was sure to produce oil of a value equal to that on an average within two miles of the main anticline through these hills.

I did not place a value of $1000 an acre on that land in my report to Mr. Towne and Mr. Madden. I made no estimate of its value at that time. My estimate of $1000 an acre is based partially upon my subsequent experience in the oil field and particularly upon my experience in the Sunset field.

My experience in the Sunset field began I think in 1893 and continued until now. I am not interested in any oil property in the Sunset field at this time, but have been making an effort to get an interest in some. I have been negotiating with the owner of the property lying east of known ground in the Sunset field—land called the Bronco and some land adjament

to it. I think it is on an even numbered section.

At the time I was in this territory in the vicinity of McKittrick in 1887, I had a relatively small amount of the knowledge I subsequently acquired in the Sunset field. I am not sure that there was development spoken of in the Sunset field in 1887. There were seepages and asphaltum deposits known there. Attention was chiefly directed to the production of asphaltum at that time and I think that inducements were offered to the railroad to build into McKittrick for the purpose of developing asphaltum, and the general opinion of people who hadn't been there was that the chief value of that territory was for the value of the asphaltum. I talked with people there who were enthusiastic about oil at that time in the broken up land lying a little to the south and west of McKittrick. **[415]**

In 1887 there was some development for oil about a mile and a half southwest of McKittrick. It was a well something like 500 feet deep, regularly drilled well, with two lines of casing in it and with oil showing in the well between the casings near the surface so that you could put a stick down and bring it up dripping with oil. No oil was produced in marketable quantities at that time. I think it was then developed sufficiently to be marketed if there had been any means of sending it to market.

I think there was some oil being marketed from McKittrick in 1893. Asphaltum was being refined and oil extracted from it. The attempt to refine asphaltum began much earlier than the time I speak of.

The Buena Vista refinery had been abandoned but another company took the matter up—I think it was the Standard Asphalt Company—and were refining asphalt, getting oil from it by stilling it and refining the asphalt into a compact, pure asphalt for shipment. That was after the railroad was built. The Buena Vista Company did not prove a success on account of the lack of transportation and was abandoned maybe ten years before that time. The Standard Asphalt Company did not begin to refine asphalt until after the railroad came to McKittrick, about 1890 or 1891. It continued for some years.

On my trip in 1887 I was in the vicinity of McKittrick two days. I was at several points. The trip took me five days. I did not examine any other territory than the Elk Hills. On one of the trips into the Elk Hills I found some brea. It was asphalt plus sand and sandstone. That was found south and west of 32, 30-24. It was to the north and east of a valley lying south of the Elk Hills and in the Elk Hills. There was brea in section 32, 30-24. There was the seepage and brea besides. I cannot say that that was all I saw on that trip. That is all I recollect now. I have merely the memory of seeing it here and there.

I reported to Mr. Towne generally on the asphaltum **[416]** situation. I reported on the asphaltum and brea indications I had found and stated that it was plainly an oil formation and that the country there indicated that it overlaid oil.

While the main purpose of my visit was to examine the extent and character of the asphalt deposits, I

went to see what there was of value and of interest to be reported on.

I reported to Mr. Towne that the brea I found at McKittrick was of excellent quality and abundant. I did not report to him that what I found in the Elk Hills was of value for commercial purposes in quantities.

Mr. Towne was interested in what I said and asked many questions concerning the possibilities of asphaltum development. That was with reference to the construction of the railroad in there. He appeared to be largely interested in what I said about the hills there being oil land. I would say that while a large part and all of our conversation was concerning asphaltum, as soon as I mentioned the fact that I believed and felt fully confident that the hills were oil lands, he took fresh interest in the matter, and I think he sent for Col. Crocker, or by accident Col. Crocker came in at that time. I am not sure which. In that statement, I specified the country now known as the Elk Hills as being valuable for oil.

I think I mentioned in that conversation that the hills lying to the west and north of McKittrick were all broken up, and that I didn't think they were good. I think I stated something to that effect and that the hills lying east were not much disturbed. I was speaking geologically. The first thing Mr. Towne said to Mr. Crocker was that "Scupham thinks those hills south of the Miller & Lux ranch is oil land." He said something signifying that. That did not refer to the Buena Vista Hills. I hadn't extended my re-

searches through them at that time. I was thinking only of the Elk Hills. I based my calculations upon a few hours **[417]** in the southeast portion of the Elk Hills and afterwards I had gone to the Elk Hills from the north.

I was in there part of three days in all. On my way back, I went into the edge of the hills and looked over them a little at that time. I made no other examination before making the report.

I had some conception as to the thickness of the overlying formation in the vicinity of McKittrick. I gained this from an imperfect log of a well and from my general observations. The thickness would vary with the distance from the anticline. I didn't fix a certain number of feet in determining the thickness, I only fixed it in my mind that it would be easily reached in the vicinity of the anticline. It was all within the reach of the drillers of that day, about 1500 feet.

On the first day in the Elk Hills, I saw an escarpment or faulted rock with strata visible in it and the strata pitched in different directions. That was all the stratification I saw then. On riding towards the southeast on the second day, I observed to the right, as I passed down through the valley, indications of stratification or dip. I didn't observe it closely, except this, that I saw that it varied; it pitched in different directions and was irregular and was entirely different from the dip I saw in the Elk Hills. It was different in degree. The dip of the strata on the other

side was sharp in places, but in the Elk Hills there is a very slight dip.

My conception was that that valley was over a syncline. The dip of the strata in the Elk Hills would indicate that the valley was a syncline, but the strata dipping sharply in places and changing so quickly to the west, would leave you in doubt that it had any relationship to the syncline.

On that trip in 1887 I attempted to get cross-sections at a point about seven miles southeast of McKittrick in that valley. **[418]** I found very imperfect sections, but such as it was, I made a sketch of it and thought it over. It was over the syncline. It included the slopes we went up and the slopes I had observed on the other side. But I cancelled them out as being too broken up to count on the general stratification of that section.

From that section, I did not determine the thickness of the overlying formation in feet. I concluded that it was within a distance that could be reached by drillers, 1500 feet or less than that I thought to the oil. I think that is about the way I had it in my mind then. I thought after making a subsequent reconnoissance over there in 1893 that it was deeper, considerably deeper, but I was still sure that the formation carried oil. I thought the thickness would go over 2000 feet. It was my opinion then that it was good oil land, but that it would cost more money to get a well through it than I was at first thinking of, when I examined the ground in 1893, I think there were locations there, but I didn't know about them

exactly. I got that from talk in camp only. I didn't see any location notices. I did not see anyone at work or any rigs or well of any kind in the hills at that time. In 1893, I crossed the hills from about their centre to the shores of Buena Vista Lake; traversed along the north Elk Hills two or three miles and then crossed them back again. On that occasion I went to the oil sand in 32-30-24. I went there at that time with reference to the possibility of taking up some land. I certainly thought it was oil territory then. I had not made any examination there between 1887 and 1893.

I first went into the Sunset about 1893 or 1894. I never became interested in that country except in a tentative way two years ago. I was not engaged in any business that would have prevented me in becoming interested there. From 1899 to 1903 or 1904, I continued to reside in California, spent my time there and elsewhere and was interested chiefly in mining enterprises. In **[419]** 1892 I may possibly have been interested in oil at Chittenden near Santa Cruz. I did not during that time make any oil locations anywhere. I made locations of other mining property in California and Nevada.

I had conversations with Mr. Madden in 1887, probably in 1896 and perhaps at other times, but not in relation to the lands in the Elk Hills.

It was 17 years after I made an examination in the Elk Hills before an application was made for patent by the company. They didn't seem to take my advice very seriously.

I first talked about this case with a representative of the Government about twenty days ago. I talked with Mr. Mills. He was the first person to approach me with reference to giving testimony in this case. That was the first intimation I had that I might possibly give testimony. I never wrote letters to any representative of the Government nor received any letters from them.

Since I first talked to Mr. Mills, I talked briefly with Mr. Veatch. These conversations were quite casual and without making any particular impression upon my mind.

I judge that the formations in the Elk Hills were of the Neocene. I do not think I found formations belonging to other periods there. That is the formation which contains the oil.

I did not know at the time I first examined the land that there was any considerable body of oil anywhere in the vicinity of McKittrick. None had been discovered then, either there or at Midway or at Sunset in 1887. There were no wells in the Kern River field at that time, but there was oil discovered all over there. The Kern River field is about fifty miles from the Elk Hills. The nearest producing well at that time was about the same distance from the Elk Hills.

I did not keep any notes of my trip to the Elk Hills. I made some little sketches of the section from that point. I do not [420] have them now. They were lost at the time of the fire.

F. OSKAR MARTIN, a witness called and sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION

I am forty years of age and a mineral inspector connected with the General Land Office.

As to my training and experience, I will say that I have been engaged, both practical and theoretical, in the study of geological problems since 1894. From 1894 until 1900, I prospected and worked in the mines in Alaska, Idaho, Washington and Montana. In 1901 and 1902 I attended the George Washington University, Washington, D. C., and took a geological course there. In the summer of 1902, I took a special course in economic geology and geological mapping at Harvard University. In 1902, I passed the Civil Service examination as assistant in the Soil Survey and was appointed as such and served in the Bureau of Soils of the United States Department of Agriculture as assistant in the Soil Survey, and later as scientist, until 1905. That year I was appointed on the engineering staff of the Isthmian Canal Commission and served one year on the Panama Canal, the last six months thereof as assistant engineer in charge of the technical work of the Division of Meteorology and River Hydraulics. In 1906, I returned to the United States and until 1909 was engaged in the general engineering practice in Idaho and Montana. The early part of 1909, I took the examination for my present position to which I was appointed June first of that year and have served in that position until the present.

My preliminary education was obtained in Germany. I took the four years' scientific course in the Real Gymnasium in Saxony.

I have been engaged almost exclusively in the California oil fields since December, 1910. I have spent approximately three- [421] quarters of my time in Kern County and about one-quarter in the Coalinga District and the territory to the north thereof.

I am acquainted with the lands involved in this suit and have made several examinations of what is termed the Elk Hills from December, 1910, until February, 1912. Prior to January, 1912, I had located a few of the corners in which I was particularly interested, and during my examination in January and February of that year, I located all the section corners in the territory mentioned and nearly all the quarter corners.

I have caused to be prepared under my supervision a map of township 30-23 and adjoining lands. The map was prepared in the office of the Second Field Division of the General Land Office in San Francisco, the actual drafting being done by Mr. Kingsbury, my associate. While the greater part of the data was furnished by me, it having been derived from former field examinations made by me, some of the data was taken from Mr. Kingsbury's field examinations—that is, with reference to the townships outside of 30-23. The data pertaining to townships 30-23 and 30-24 was derived by joint examinations which Mr. Kingsbury and I made during January and February, 1912. The

data pertaining to the other townships was derived from examinations made before January, 1912, and some of it, especially referring to township 30-22, was also gained in January and February of this year and also from examinations made previously.

In explaining this map in detail, I will say that the township and section lines are taken from the official township plats on file in the United States Surveyor-General's office at San Francisco. The structure lines, as they relate to townships 30-23 and 30-24, have been put on from our personal examinations in January and February, 1912.

The structure lines in the other townships were taken from maps enclosed in Bulletin 406 of the U. S. Geological Survey **[422]** and have been checked by me in previous examinations and found to be correct. The full red circles on the map denote wells in which discovery of oil has been made. The open red circles denote incomplete wells—either drilling or idle. The checked red lines, the red hatched lines, in the sections of township 30-23 are lands involved in this suit. The red blotches mark oil or gas seepages. Of the base colors, the buff represents the area included in the McKittrick formation, and the green color represents the area of the formations below the McKittrick. The large letters denote the names of the different areas in the field, such as "Elk Hills", "Buena Vista Hills", "McKittrick Hills", and "Temblor Range". The black sinuous lines represent anticlines; and where those black lines are broken, they represent doubtful anticlines. The

small marks with figures attached thereto mark the dips and the amount of the dips.

The map has been thoroughly checked by me in the field and I am familiar with the conditions. This map represents the condition in the field as it existed in January and February, 1912. It has been checked from the field work and is correct.

Thereupon the map referred to was offered in evidence and marked Plaintiff's Exhibit "O".

The witness, continuing, testified as follows:

As to the appearance of the Elk Hills from the surrounding country, the general contour, elevation and typical characteristics, I will say that they may be termed an anticlinorum, meaning thereby an anticlinal ridge with a major anticline and smaller wrinkles, folds, running parallel or nearly parallel to the main ridge. The elevation of the Elk Hills runs from 350 feet or thereabouts to somewhat over 1500 feet at the highest point going southward and to 1000 feet on the lowest point of the southern slope. The hills being of a comparatively recent geological age, their topography bears a close resemblance to the geological structure. [423] The dips on either side of the main ridge are low and gentle, giving it rather a broad summit and a more or less dome-like appearance.

The hills cover a territory about 18 miles long and about 6 miles wide.

Before we examined the Elk Hills, we had been to the oil seeps at McKittrick. I do not know to my personal knowledge that there had been any discovery of oil by drilling in the Elk Hills before my first ex-

amination. As the result of my examination of the land in the Elk Hills and my knowledge of the surrounding country at that time, I arrived at the conclusion that the lands there were underlaid by Petroliferous deposits at a reasonable depth when I first examined the land.

Comparatively little erosion had taken place, because, as I stated before, the hills belong to a comparatively recent geological period, and for the further reason that the climate is arid. There is evidence on the surface that the conditions in the Elk Hills are practically the same as when first uplifted, and they were practically the same in 1903 as they were in 1910.

In my opinion, the most favorable indication that the Elk Hills must be considered oil lands is the structure of the territory being of an anticlinal character. It is a well known fact that along the summits of anticlines, petroleum tends to accumulate and that the anticlinal summits are the most favorable spots for petroleum to accumulate.

I found an oil seepage in the northwest quarter of section 32, township 30 south, range 24, which confirmed my opinion which I had formerly arrived at. That gas seepage is situated near a place where the anticline has been somewhat deflected, giving the hydro-carbons a chance to exude to the surface. The existence of that seepage was plain evidence to me that the lands must be underlaid by petroliferous deposits. Further, having seen **[424]** and examined the oil exudations to the west, near the town of Mc-

Kittrick, I found that the formation underlying said oil seepages near McKittrick extended easterly to the Elk Hills, and that no break being visible between the formation at McKittrick going easterly to the Elk Hills was evidence to me that the formation must be the same,—that is, that the formations overlying the oil sands at McKittrick and the formations overlying the oil sands at the Elk Hills are the same.

In my examinations extending over the last 18 months or so, I have observed seepages in the Buena Vista Hills as denoted on the map. These seepages are in sections 10 and 11, township 32, range 24. The formation of the Buena Vista Hills and the Elk Hills are the same.

I have seen the seepages as denoted on this map in township 30-22 extending through sections 18, 19, 20, 29 and 28 down to the southeast corner of section 34 in the same township. After taking into consideration the development of seepages known in 1904 as shown by Barlow & Hill's maps, introduced in evidence as government's exhibit "I", and after taking into consideration the geological structure of the region, I would have advised any company employing me to hold those lands in the Elk Hills for their mineral value. I do not believe that any competent oil geologist would, in 1904 at that stage of development, have been justified in advising his employer to dispose of the lands involved in this suit for their agricultural value alone, and I certainly would have advised my employer, who was not the owner of the

land in 1904, to acquire it at a price in excess of their value for agricultural purposes.

I was engaged in classifying soils and making soil surveys in North Carolina and Virginia while employed in the Bureau of soils of the United States Department of Agriculture, and I also made a soil survey in Idaho of the overflowed lands of the St. Joe [425] River for the Government in re United States vs. The Washington Water Power Company. Besides the soil survey, I have had charge of the mechanical laboratory of the Bureau of Soils in Washington, D. C. in making physical analyses of soils for approximately 3 years and made over 5000 soil analyses from all parts of the United States and its dependencies.

I have examined the soils of the lands involved in this suit. They are residual ones and may be classed in one type, terming it gravelly sand. They are very coarse, and of course on that account their drainage would be excellent; but, for the same reason, on account of their physical structure, they are not capable of retaining sufficient soil moisture to induce plant growth. Taken in connection with the slight rainfall existing in this territory, it is apparent to me that no agricultural crops can be raised on these lands.

I saw evidences on the west half of 16-30-23 of cultivation. I found that about 10 acres of the land had been ploughed or scratched over and found a stack of barley. The crop had not been a plentiful one and had not matured.

I have prepared a summary from data copied from the official reports of the United States Weather Bureau from their station at Bakersfield which gives the temperatures and precipitations for each year from 1906 to 1910, which is as follows: **[426]**

CLIMATOLOGICAL DATA—BAKERSFIELD

	Temperature					Rainfall				
	Annual Mean	Highest	Date	Lowest	Date	Total for Year	Greatest Monthly	Month	Least Monthly	Month
1906	63.8	113	July 24	26	Jan. 1*	7.65	1.70	March	0	X
1907	63.9	110	July 18	21	Mar.13	4.44	1.23	Jan.	0	X
1908	63.2	118	July 28	23	Dec 18	3.69	1.15	Sept.	0	X
1909	68.0	108	July 20	30	Dec. 31	9.29	2.26	Nov.	0	X
1910	67.4	110	May 31*	30	Jan. 4*	5.31	1.37	Nov.	0	X

* Also on other dates.
X Several months.

Monthly and Annual Mean Temperatures and Rainfall for 1910 with Departures from the Normal.

	Jan.	Feb.	Mar.	April	May	June	July
Temperature	47.4	50.8	62.8	69.0	74.6	78.4	86.6
Departure	–0.7	–1.6	*4.9	*4.3	*1.7	–3.5	–2.0
Rainfall	1.15	0.22	1.20	0	0	0	0
Departure	*0.04	–0.29	*0.27	–0.22	–0.18	–0.05	–0.02

	Aug.	Sept.	Oct.	Nov.	Dec.	Annual
Temperature	84.0	77.0	69.7	60.6	48.4	67.4
Departure	–0.7	*1.2	*3.7	*4.7	*0.2	*1.0
Rainfall	0	0	0.83	1.37	0.54	5.31
Departure	–0.01	–0.13	*0.36	*0.99	–0.26	*0.50

[427]

I would say from the evidence existing in 1904 that I knew that there was petroleum or natural gas in the Elk Hills. I have had experience in quartz mining. A man does not know that he has a paying mine when he finds a gold-bearing ledge on the surface. I would say that the chances to develop oil in the Elk Hills are greater than the chances to develop a paying gold or silver mine from the outcrop usually existing on quartz property.

From the evidence existing in 1904, an ordinarily prudent man would have been justified in the expenditure of money in the Elk Hills with a reasonable expectation of ultimately developing a paying oil property.

CROSS-EXAMINATION OF F. OSKAR MARTIN.

From the indications I saw in 1910 and 1911, I would say that the chances to get oil in the Elk Hills in 1904 would be considerably greater than the chances to develop a paying gold mine or silver mine from the ordinary evidences of outcrops connected with gold and silver. In estimating the relative chances, I cannot state it in percentages.

My experience as to the actual prospecting and development of oil is what I have learned during my work in the oil fields. I have not been engaged in oil development myself; have never drilled any wells or been engaged in the practical drilling of wells. I consider myself an oil expert along geological lines from my studies. I have never had anything to do

with the sinking or operation of an oil well that was productice. An oil geologist determines the places where practical men should work and I deem myself qualified to determine such places. My determinations have come out pretty well in certain instances. I have not determined such places for the practical man, but practical men have worked at places I have pointed out in con- **[428]** fidential reports to the Government and found oil within twenty feet of where I predicted it. I am prevented by the Government regulations from advising practical men where to look for oil and have not advised them for that reason. I did not conclude that 100% of my predictions in the oil fields would come true; to err is human. My errors should not be at all common. As far as California is concerned, I would put myself on an equality with the average geologist who is familiar with the oil conditions. I say this on my experience in the oil fields since December, 1910.

I was not making examinations of the California oil fields in 1910 for the purposes of this litigation. I did not know anything about the litigation at that time.

My time was devoted to the oil fields in Kern County, to the portion extending from Lost Hills to Maricopa—the greater portion to the Buena Vista Hills and the Elk Hills.

The only two wells that I know of in the Elk Hills that have produced oil are the wells on 26-30-23 and 30-30-24. I do not know how much oil the well on 26-30-23 has produced. It has produced some oil.

The well on 26 did not contribute very largely to my knowledge of the conditions, not any more than the other wells, but as much as the well on section 30. I know from hearsay that those wells were not in existence in 1903 and 1904. I have seen the logs of those wells.

On account of the oil seeps existing to the west of the lands involved in this suit and on account of the favorable structural conditions of the Elk Hills, it was clear to me from the conditions existing in 1904 that the chances of finding oil in the Elk Hills were much more favorable than the chances of finding gold in quartz prospects, judging by the outcrops, because the conditions are so dissimilar between the accumulations of oil and the appearance of valuable minerals. The conditions favor oil.

The experience I had in determing whether the condi- [429] tions favored the discovery of oil in the Elk Hills was in the Lost Hills, Bellridge and the eastern extremity of the Buena Vista Hills where oil was discovered. Oil has been produced in paying quantities in Bellridge and the Lost Hills, and I think it will be on the Eastern extension of the Buena Vista Hills. They have not gone deep enough there. All indications bear out my predictions. In these instances I desire to be understood as having surely predicted the discovery of oil. I made a thorough examination of the territories mentioned and recommended their withdrawal. My recommendation was passed upon by the Classification Board of the United States Geological Survey and the lands were there-

after withdrawn by the President, and my prediction that the lands were petroliferous in character has come true. I would not say that I could always, or even 50% cent of the time, predict where oil would be found in paying quantities. I could not give any precentage because I would not predict that oil could be found in paying quantities unless under the most favorable circumstances.

I would not say that the discovery of oil is in the nature of a gamble. I would call it a speculation more than a gamble. A man that speculates most usually has some reason for speculating, while gambling is just taking a chance whether the man knows anything about it or not. Looking for oil in paying quantities is a speculation, but it is not a speculation to look for it in any quantities in new territory—absolutely not in certain territories.

If I had been on the ground in 1903 or 1904, I could have pointed to 30-23 in the Elk Hills and said: "I know there is oil down there," without any question of being correct. I would have said that the oil could be found within three or four thousand feet because of the depth of the wells then existing in the McKittrick field. The fact that the oil would be deeper in the Elk Hills was due to the fact that less erosion had taken place [430] and the overlying strata was thicker than in the McKittrick field.

In 1904, as nearly as I recollect, the wells in the McKittrick field were from six to eleven hundred feet, or maybe deeper.

The fact that I had examined logs of wells four

thousand feet deep did not influence me in reaching the conclusion that oil would be found between three and four thousand feet deep because when I first went into the Elk Hills, I didn't know the depth of the wells there. I had heard all kinds of rumors about the well in section 26 and very likely I had heard its depth.

No one told me to place myself exactly in the position of a man in 1904 when I examined the Elk Hills, and it did not occur to me to do that. As a man interested in the geology of the country and in ascertaining its character, I was in a state of mind in which I was ready to consider any evidence that bore upon the character of the Elk Hills and considered anything I observed or anything I heard and thought reliable, and the conclusion I reached at that time was based upon knowledge obtained in 1910.

Prior to going into the Elk Hills, I believe I had read Bulletin 406 by Ralph Arnold and Harry Johnson. I read all the geological publications with interest and care, if they pertain to any district in which I have to make an examination, and believe that I read what was printed in that Bulletin about the Elk Hills at that time or prior to the time I went into the field. I didn't read the whole of the Bulletin before I went into the field, but the greater part thereof and I think that part pertaining to the Elk Hills. I think I had a copy of the Bulletin with me and examined the country in connection with the maps accompanying the Bul-

letin. We devoted the greater part of our time during that period in December to section 24, 30-23 for the purpose of determining whether its chief value was for the oil or for Fullers Earth deposits. I came to the conclusion that it was [431] chiefly valuable for oil and so reported since that time.

Counsel for the defendant at this time asked for the production of the report made by the witness in connection with section 24, 30-23, and counsel for the Government, Mr. Mills, replied: "The reports made by the witness, or any person employed by the General Land Office, are of a confidential nature and transmitted to his immediate superiors; and I suppose that a subpoena *duces tecum* upon the proper officer of that Department will produce them if they consider it a matter of public policy to let them out.

"I want to say that I would have no hesitancy whatever, if the report were in my possession and not in contravention of the rules, to produce it on your request; but the reports, if any have been made, as the witness suggests, were made to his superior in a different Department than that I now represent, and I have no control over the report whatever. However, I cannot determine the public policy of any Department. If the report is to be released, I think on proper notice to the appropriate officials, the report can be obtained,—that is a matter for them to determine."

The witness, continuing, testified as follows:

I suppose I read that portion of Bulletin #406 contained on page 210 which reads as follows: "Assuming the thickness of the McKittrick formation to be about the same in the Hills as it is in the Midway and McKittrick district, that is, between fifteen hunred and two thousand feet, it seems probable that at the axis of the Elk Hills anticline, the oil bearing zone is from nine hundred to fourteen hundred feet below the surface"—if that is contained in the Bulletin.

As I have said, to err is human and I consider that statement a slip of Mr. Arnold's because there seems to be some **[432]** kind of a contradiction there if you consider his blue line on the map which he puts as a part of the 5000-foot limit. If the statement in the Bulletin was not a slip, the blue line should have been extended considerably further north when the dip of the formation is taken into consideration. Mr. Arnold's assumption does not come out. The actual tests in the field have shown his statement that oil should be found between nine and fourteen hundred feet, to be wrong. The 5000-foot limit indicated by the blue line is practically correct.

I consider Mr. Arnold a very competent geologist I found that Bulletin #406 appears to be unreliable so far as the Lost Hills are concerned. Maybe I didn't assume the same things that Mr. Arnold assumed. We didn't each have to make assumptions to start with; it depends a good deal on the time that certain assumptions are made. Developments in the oil field are going on continuously, and the man that

works in the field now has more data to go on than Mr. Arnold had.

There had not been, as far as I know, any oil found in the Elk Hills at the time I was there but developments had gone on in the McKittrick field, and so far as the relation between the oil fields as a whole were concerned, I certainly was in a better position than Mr. Arnold was when he went in there. Mr. Arnold's slip refers specifically to the Elk Hills in that peculiar instance and I was not in a better position than he was when I first went into the Elk Hills and considered them alone. Later developments confirmed my views.

I first went into the Elk Hills in December, 1910, the first part of the month. While I was there, I stayed at the camp of the Associated Oil Company in section 24. I went there the first day and remained until the next afternoon. I then went to Taft where I examined oil properties in that vicinity. I was there less than a week and then went to Maricopa for a few days [433] and then went into Red Rock Canyon north of Mojave and west of Cinco where I remained two weeks maybe. After that I went back to Maricopa, McKittrick or Taft. While there, I examined some oil properties, after which I went to San Francisco.

While I was in the Associated Oil Company's camp, I met one or two watchmen and had some conversation with them with reference to that section and with reference to operations there. I asked them a good many questions and got no satisfaction because

they were instructed by their superiors not to give out any information, so they told me. That is a general rule through oil fields. I got no information from them.

The next time I returned to the Elk Hills was sometime in May, 1911. I may have been there prior to that time. I travelled over the Elk Hills at that time from south to north and may have stayed on section 26 for lunch. I stayed at the Hill Crest property in 28-30-23 over night on one occasion, but don't know whether it was that time or not. I was over the Elk Hills at various times in 1911.

I made examinations of the territory at McKittrick in December, 1910, and have been over the McKittrick fields several times since then. I don't know just how often. I made an examination of the McKittrick fields a day or two before I went into the Elk Hills the first time. I discussed the McKittrick fields with several men on the oil wells, the drillers, and made inquiry as to the depth of the wells.

Q. By Mr. Lewers—Mr. Martin, did I understand that you returned from San Francisco to the vicinity of the Elk Hills about the month of May, 1911? Is that correct?

A. It may have been the latter part of April.

Q. Well, it was about that time?

A. Yes sir.

Q. Is that correct? **[434]**

A. Yes sir.

Q. And prior to that time, you had been in the Elk Hills not to exceed two days in all?

A. I believe that is right.

Q. And possibly not two entire days?

A. Well, we were two different days in succession in the Elk Hills.

Q. That is, portions of two different days?

A. Yes sir.

Q. After you returned from San Francisco in April or the first part of May, to what part of the field did you go first?

A. I cannot state now the exact date nor the exact places in the Elk Hills which I visited during any part of 1911 without referring to my note-book covering that time.

Q. Haven't you any recollection at this time in a general way where you went?

A. I do remember that I was on Section 30, Township 30 South, Range 24 East, sometime during 1911. I remember that I have been over 26 and have been on Section 26 during said year several times, and that I crossed the Elk Hills into the central and southerly direction and easterly and westerly, several times during said year.

Q. In what other portion were you during that period after you returned in April or May, 1911? Were you at Sunset?

A. In what portion of the Elk Hills?

Q. No; of that country.

A. I have been all over the field,—Sunset, Buena Vista Hills, McKittrick, Cariso Plains,—in 1911.

Q. After you returned in April or first part of May, 1911, how long did you remain in that country?

A. I don't recollect exactly. Several weeks.

Q. And then where did you go? [435]

A. As I said before, I don't remember the exact places that I went over during said year unless I refer to my note-book.

Q. You remember whether you returned to San Francisco or not during 1911?

A. Oh, I have been in San Francisco at least twelve times during 1911.

Q. Then you did not remain continuously in the oil district?

A. No, I did not.

Q. How much time were you in the oil district altogether in 1911?

A. I believe the only other work I have done outside of the oil fields in 1911 was two trips to Goldfield, Nevada, another trip to Coaldale, Nevada, and one trip to the vicinity of Johannesburg, California.

Q. I am not interested in places that you went, but I want to know how much time in all did you spend in the oil district after you returned there in April or May, 1911?

A. I would say that I was in the oil fields themselves about three-quarters of the time.

Q. Three-quarters of the remainder of the year?

A. Yes sir; not counting the time spent in San Francisco, about three-quarters of the year.

Q. What portion of that time was spent in the Elk Hills?

A. In the Elk Hills themselves perhaps, during said time, two weeks.

Q. Then most of your observations were carried on in other territory besides the Elk Hills?

A. In the territory in the vicinity of Elk Hills principally.

Q. A portion of that time you were over in the vicinity of the Lost Hills, were you not? **[436]**

A. Yes sir; I was there in April.

Q. When was it that you first went to what you call the gas blow-out in Section 32, Township 30-24?

A. In January, 1912.

Q. Now, when was it that you formed your conclusion first that you knew that there was oil underlying the Elk Hills?

A. After I had been there the first time, in December, 1910.

Q. How long after?

A. Right thereafter; shortly thereafter.

Q. Before you returned to San Francisco?

A. Yes sir.

Q. Did you form that conclusion while you were in the Elk Hills on that first trip?

A. Yes; from the observations made at that time and what I had learned before going in there.

Q. What you had learned and what you had read before going in there?

A. What I had read had something to do with it; yes.

Q. When you were in there on that first occasion, you saw no oil sands or gas blow-outs, did you?

A. Not in the Elk Hills; no.

Q. And did you discover any anticline on that occasion?

A. Yes; the anticline structure is plainly visible.

Q. Then, so far as your own observation went, at the time you formed this conclusion, you had seen nothing in the Elk Hills except evidences of an anticline? Is that correct?

A. As far as the Elk Hills are concerned, yes; the anticlinal structure was the principal feature.

Q. Is an anticlinal structure to your mind, or was it then to your mind, a sure indication of the presence of oil?

A. Yes, if it lies in the vicinity of developed oil fields it is a most favorable place for the accumulation of petroleum. **[437]**

Q. Then you took into consideration the fact that this laid in the vicinity of a developed oil field, did you?

A. I did.

Q. Then, you didn't judge that from the standpoint of a man who went in there in 1903 or 1904, long prior to the development of any oil territory, did you?

A. I don't think that I was thinking about 1904 at that time. I had no occasion to think of it.

Q. Then why did you testify on your direct examination that a man in 1903 or 1904 would have known that that contained oil?

A. Because the anticlinal structure was there at that time and the oil seeps existed at that time.

Q. You didn't see them, did you?

A. Those at McKittrick I am referring to, or the vicinity of McKittrick.

Q. Then you were drawing your conclusion at that time on the basis of what was developed or shown at McKittrick, were you not?

A. Partly; along with the anticlinal structure of the hills.

Q. You have seen many anticlines that were not oil formations, haven't you, in the course of your life?

A. Yes, but not in the vicinity of oil fields.

Q. Did you at that time know what development there had been at McKittrick in 1903 and 1904?

A. Not of my own personal knowledge.

Q. You didn't know at all?

A. No.

Mr. Mills—The question is objected to because the witness has testified on government's Exhibit I showing the state of the development in 1904.

Q. By Mr. Lewers—Did you at that time have in your [438] possession a copy of government's Exhibit I?

A. No.

Q. It was not in existence, was it?

A. No.

Q. Then, whatever conclusion you reached in December, 1910, had no relation to government's Exhibit I?

A. No.

Q. Did you in December, 1910, know anything about what development there had been at McKit-

trick or in the vicinity of McKittrick in 1903 and 1904?

A. None, except as I gained it from reading reports which mentioned the years in which the vicinity of McKittrick was developed.

Q. Which report did you read that mentioned that?

A. I think there is something in the 406 Bulletin of the United States Geological Survey.

Q. You think there is?

A. My recollection is that there is.

Q. That is the report to which you referred as having read before you went in there in December, 1910, with reference to the development of McKittrick?

A. Yes, sir.

Q. Was there any other?

A. No; not that I recollect now.

Q. And you are certain that bulletin No. 406 says anything at all about development that existed at McKittrick and its vicinity in 1903 and 1904?

A. I think it gives a history of the early oil development.

Q. But you are not sure, are you?

A. Not absolutely sure.

Q. Now, isn't it a fact that whatever conclusions you reached in December, 1910, or later on with reference to the Elk [439] Hills, were based upon everything which you had heard that you regarded as worthy of consideration, and upon all of the things

which you observed, not only there, but around McKittrick and in the other portions of the oil fields?

A. I cannot state exactly the condition of my mind in various parts of the year 1911. I cannot disassociate things which I may have learned in one part of the year with several things which I may have learned later.

Q. Did you ever make any effort to disassociate any fact that you had in your mind from other facts in order to reach conclusions during the entire time that you were in that territory?

A. Well, during the entire time of 1911, I have considered the Elk Hills as being oil in character.

Q. That is not the question. Are you prepared to state now that at any time in 1910 or 1911 you deliberately endeavored in your own mind to reach a conclusion as to the character of that country in the Elk Hills, during which effort you eliminated from your consideration facts or reports which you had received concerning matters discovered after 1904? Do you understand the question?

Mr. Mills—I don't.

A. I don't know that I did. I would have to refer to reports made at different times in the said year, and they would then state just exactly what I thought at that time. Now, I am not prepared to state that I did.

Q. By Mr. Lewers—You made your reports from time to time on the basis of what you learned up to that time?

A. Yes; up to the particular time that I made my reports.

Q. And in doing that you took into consideration everything you had learned?

A. Everything I had learned previously.

Q. Then you never were in the position where you could say **[440]** that your mind was in exactly the same condition that it would have been had you gone in there in 1903, under the conditions then existing?

A. Yes. I think under the conditions existing in 1903 I would have formed the same opinion which I have formed since.

Q. You would have formed the same opinion in 1903 that you did in December, 1910? Is that correct?

A. Yes.

Q. And at that time you would have formed the opinion that there was oil in that territory somewhere between three and four thousand feet beneath the surface?

A. At about that depth; yes.

Q. Now, in December, 1910, you had been in the Elk Hills a portion of two days; had seen nothing but some indications of an anticline. Were you able with merely those indications in the Elk Hills to determine whether that oil was one thousand or twenty thousand feet beneath the surface?

Mr. Mills—The question is objected to because the assertion in the question is not according to the facts. He did not limit his observations to the anticline.

A. I testified that the oil near McKittrick was found at a depth between six and eleven hundred feet, and I concluded after an examination of the Elk Hills that the strata under the Elk Hills overlying the oil sands were considerably thicker and, therefore, put my estimation as stated of the depth.

Q. By Mr. Lewers—Were there any wells in McKittrick in 1904 eleven hundred feet deep?

A. I don't know.

Q. Then you don't know now what the conditions at McKittrick were so far as the discovery of wells and the depth was concerned in 1904, do you?

A. Except what I have heard. **[441]**

Q. Did you hear that there was any well in McKittrick eleven hundred feet deep in 1904?

A. It seems to me that I have heard that statement.

Q. Had you heard that in December, 1910?

A. I don't recollect. I may have heard that while in the McKittrick field at that time.

Q. Where is this well that is eleven hundred feet deep?

A. I don't recollect.

Q. Did you see it?

A. I don't recollect that.

Q. Did you have a log of that well?

A. No.

Q. Did you know through which formation it passed?

A. Not having seen the log, I did not.

Q. Did you know whether that well had revealed any oil or not?

A. I believe I heard in December, 1910, that wells had been sunk to eleven hundred feet and had discovered oil.

Q. What kind of oil?

A. Low gravity oil, of the same character as found in the vicinity of McKittrick.

Q. What is that character?

A. Low gravity.

Q. What gravity?

A. As near as I can recollect, it was 15 and 16 degrees.

Q. Is the oil in the vicinity of McKittrick of low gravity generally?

A. That is my impression.

Q. Do you know?

A. Yes; what I have seen there.

Q. Now, in passing upon that territory and its oil possibilities, as a scientific expert don't you think it was important to [442] ascertain what sort of oil is found at McKittrick?

A. Yes.

Q. And you did so?

A. Yes sir.

Q. And yet you cannot at this time state what it was?

A. I said that it was of low gravity.

Q. Uniform, was it?

A. No, I wouldn't say it was uniform—of the same degree of gravity all over the field.

Q. Well, what was the variation?

A. I don't recollect.

Q. Did you ever know?

A. I have heard and read of the gravities, yes.

Q. Did you make any personal investigation to ascertain?

A. No; I never determined the gravity of any oil.

Q. Did you make any investigation at McKittrick during any of the time you were in there as to what sort of wells were being sunk to the eastward toward the Elk Hills?

A. Yes; I have seen wells to the eastward from McKittrick.

Q. How deep were they—the ones you observed?

A. The Newman-Morris well was twenty-two hundred feet, as near as I can recollect.

Q. What sort of oil did they find?

A. They hadn't found any oil at that depth.

Q. How far was that from McKittrick?

A. Two miles.

Q. In what section and township?

A. 26, 30-22.

Q. You say that well at the time you observed it was twenty-two hundred feet deep?

A. Yes.

Q. And no oil in sight? **[443]**

A. No.

Q. Did you obtain a log of that well?

A. Yes, I have seen a log of that well.

Q. Did you observe any other wells besides this

one lying to the east of McKittrick toward the Elk Hills?

A. No.

Q. What did you determine was the overlying formation at McKittrick?

A. Sand, gravel and clays.

Q. Belonging to what period?

A. It has been termed the McKittrick period.

Q. That is purely a local name, isn't it?

A. Yes. It has been termed that by the U. S. Geological Survey.

Q. Did you determine yourself to what period that formation belonged?

A. No, I did not.

Q. Do you know what period it belonged to?

A. No; for the reason that I considered it of no importance what particular geological age any period belongs to, as long as it overlies a formation which carries oil. It doesn't matter what you call it.

Q. But you would consider the formation which carries oil of importance, wouldn't you?

A. I would, as long as it carries oil; yes.

Q. And did you determine what formation carried the oil at McKittrick?

A. No, I did not do so myself. I was not interested in the geological age, as long as it carried oil. Of course, I accepted the statements made by the United States Geological Survey.

Q. You accepted the statements made by Mr. Arnold, did you?

A. That it belonged to a certain geological age, yes. [444]

Q. Did you accept the statement made by Mr. Arnold in bulletin No. 406?

A. Yes, as far as the ages of the formations are concerned.

Q. That is, in that respect your conclusion agreed with his?

A. I just accepted his statements; I did not check them up.

Q. You reached no conclusion based on your own independent observation?

A. So far as the age of the formations is concerned, no.

Q. Did you consider yourself qualified to reach a conclusion as to what period the oil-bearing formation belonged to?

A. If I had devoted sufficient time to it, I think I could have determined it.

Q. But you did not attempt to do so?

A. No.

Q. Did you not regard that as having some bearing upon the determination of whether or not the Elk Hills was oil territory?

A. No; I did not consider the age of any formation of any importance whatever in determining the oil area. As long as an oil-bearing formation exists and is overlaid by another formation which is capable of accumulating oil, that is the most important thing.

Q. Did you see any formation at McKittrick that you determined was an oil-bearing formation?

A. The oil itself—the oil exudation in the vicinity of McKittrick, I considered the best evidence.

Q. Did it occur to you that those exudations, as you call them, might have come from some considerable depth through an open stratum?

A. I did not take into consideration—Oh, they certainly came from some depth.

Q. Didn't it occur to you as important to ascertain, if possible, how deep the oil producing formation was? [445]

A. I have already stated that I learned of the depth of oil sands in the vicinity of McKittrick on my first visit there.

Q. And how deep did you learn they were?

A. From four hundred feet up, at those wells where we inquired for the depth.

Q. And what determination did you reach as to the thickness of the overlying formation which you call the McKittrick formation at McKittrick?

A. No particular thickness.

Q. That is, you reached no conclusion as to the thickness?

A. Except that it increased toward the west—toward the east.

Q. Didn't it occur to you that it was important to determine how thick it was when you started, in order to determine how thick it was when you got over into the Elk Hills?

A. At that particular time I did not pay so much

attention to the thickness of the overlying formation in the vicinity of McKittrick, except that they thickened toward the east.

Q. What was the dip toward the east? Did you ascertain that?

A. I don't recollect off-hand except that I checked the dip at several places as indicated on that Exhibit F.

Q. The question is, Did you ascertain what its dip was toward the Elk Hills. I am not asking what the dip was, but did you ascertain what it was?

A. Yes sir.

Q. What was it?

A. I don't recollect. I just checked the map.

Q. Did you make any note of the dip?

A. If I made any note, it would read "Checked with Arnold's map."

Q. You took Arnold's word for it? **[446]**

A. No; I said I checked as far as that particular territory is concerned on Mr. Arnold's work.

Q. Will you tell me just how you went about checking Mr. Arnold's determination of that dip? Tell me the whole process.

A. We went over the territory south and east of McKittrick and located some of the dips which are indicated on this map, government's Exhibit F, and measured them ourselves.

Q. How did you find them revealed? How were they revealed on the ground?

A. On exposed strata.

Q. Where?

A. As indicated on this exhibit.

Q. Will you kindly tell me where?

A. I don't recollect any of them just now except as we went over the territory in a general way.

Q. Isn't it a fact that you are unable to tell me what you did, without referring to that map?

A. Oh, no.

Q. And is it not also a fact that you did not make any such determination, but that you took Mr. Arnold's conclusion?

A. No. I have never taken Mr. Arnold's conclusions solely. I have always checked them in the field before I accepted them.

Q. Now, at how many places, stating their location with reference to McKittrick, did you find any indications of strata by which you could determine the dip toward the Elk Hills?

A. I can't recollect the exact number of places.

Q. How many places did you observe in fact?

A. I can't recollect how many.

Q. Did you observe any?

A. Yes sir.

Q. And did they all show the same dip—the same angle?

A. No; they did not. **[447]**

Q. Did the dip diminish or increase as you approached the Elk Hills?

A. The dips were very variable.

Q. Will you kindly answer the question?

A. As near as I can recollect, they increased and decreased both.

Q. Did you discover any indication of synclines between McKittrick and the Elk Hills?

A. A syncline must exist since in the Elk Hills the dips are the other way.

Q. Then you did discover evidences of a syncline?

A. As near as you can discover any syncline.

Q. Were you able to determine the depth of the formation of that syncline which you call the McKittrick formation?

A. No; I am not able to determine the depth of the axis of the syncline.

Q. Is this twenty-two hundred foot well that you examined in this syncline?

A. No, I think not.

Q. Don't you know?

A. I think it is on the flank of the McKittrick anticline.

Q. That is, it is west of the syncline, is it?

A. It would be west of the syncline; yes.

Q. Now, from the time when you discovered the indications of a syncline until you got into the Elk Hills, did you see any evidences of the deep of the McKittrick formation toward the Elk Hills?

A. No. After entering the Elk Hills from the south, the dips are to the south and southwest.

Q. What assistance did that fact furnish you in determining the thickness of the McKittrick formation in the Elk Hills?

A. I stated before that the reason I thought the thickness [448] of the formation in the Elk Hills is greater than at McKittrick is on account of the fact

that less erosions have taken place in the Elk Hills than near McKittrick.

Q. Did you determine how much erosion had taken place at McKittrick?

A. No, I did not.

Q. Did you determine during what period that erosion had been going on?

A. No, I did not. The reason that more erosion has taken place in the McKittrick anticline is because the structure is more broken up and of a steeper dip, while in the Elk Hills anticline the dips are low and gentle.

Q. Then that is your reason for concluding that there was more erosion at the McKittrick side, is it?

A. Because the strata has been more fractured; yes.

Q. In your opinion, during what period of time had this erosion been going on in the Elk Hills?

A. Since they were first folded up.

Q. And during what geological period was that?

A. My opinion, during the same time that—I am not prepared to state now whether the Elk Hills fold was created later or at the same time that the McKittrick anticline was folded.

Q. Are you prepared to say whether that occurred in recent times geologically or during some earlier period, and, if so, in what period?

A. I didn't make any particular study, as I stated before, of the geological periods or of their particular age, since I was not interested in it, and our work is not along such lines.

Q. But as a scientific geologist, wouldn't it be the first thing that you would endeavor to determine?

A. If I was sent there for that purpose, yes; but such work is left to the United States Geological Survey or other [449] geologists or scientific bureaus.

Q. You know it is not of the archaean period, don't you?

A. Yes I know that.

Q. Is it Miocene or Pliocene or Eocene?

A. I think it covers all the last three periods mentioned—what do you refer to?

Q. The McKittrick formation. What you call the McKittrick formation.

A. It covers the upper Miocene, Pliocene and Pleistocene.

Q. Do you think it covers the Eocene?

A. The McKittrick?

Q. Yes sir.

A. No, I don't think so.

Q. Why do you say that?

A. Well, I have examined fossils from the formation in the Lost Hills occurring at the base of the McKittrick, and said fossils only occur in the Miocene and not in the Eocene.

Q. Did you ever find any fossils in the Elk Hills?

A. No, I did not.

Q. Did you ever hear of anything found there?

A. No, I don't think I ever heard of any.

Q. What relation do any fossils have to the Elk Hills?

A. Because the Lost Hills and the Elk Hills are of the same formation.

Q. How do you know?

A. From a general knowledge of the oil fields and the territory intervening.

Q. Have you a general knowledge of the oil fields?

A. I think so.

Q. Now, Mr. Martin, if you did not make any determination of the thickness of the overlying formation at McKittrick, of what advantage was it to you to determine the dip or to check **[450]** the dip of that formation toward the Elk Hills, in reaching a conclusion as to the depth of that formation in the Elk Hills?

A. It is always my practice to check any map made by somebody else when I am in the field, and cover the same territory.

Q. Wasn't one of the necessary and absolutely essential factors in working out the depth of the Elk Hills, the thickness of the formation where you found your dip?

A. The reasons for saying that the depth of the oil sands in the Elk Hills is between three and four thousand feet is not solely the dip along the anticline south of McKittrick, but also from the fact that the Buena Vista Hills are very similar to the Elk Hills; that the formation appears to be the same; and that oil has been found in the Buena Vista Hills at twenty-six hundred and three thousand feet.

Q. That fact aided you in determining the depth at the Elk Hills?

A. Yes sir.

Q. And that was more important to you in determining the thickness of the formation in the Elk Hills than the dip was?

A. The similarity of the formation in the Buena Vista Hills and in the Elk Hills, and the similarity of the structure of both territories had very much to do with the conclusion I arrived at the oil possibilities of the Elk Hills.

Q. Would a man in 1903 have known anything about that well in the Buena Vista Hills?

A. Not about that well, but there are some seepages in the Buena Vista Hills.

Q. That well was not sunk till 1910, was it?

A. No—when?

Q. 1910. You are referring to the Honolulu well.

A. Yes. I think the Honolulu well reached oil sand in the latter part of 1909. **[451]**

Q. That Honolulu well had considerable influence in your mind in reaching your conclusion as to the character and depth of the formation in the Elk Hills?

A. Yes; a good deal to do with it.

Q. More than any other single thing, didn't it?

A. Well, no. I wouldn't put it that way. You might say it confirmed the conclusion which I had previously arrived at.

Q. You say it confirmed the conclusion you had previously arrived at? Did you arrive at a previous conclusion concerning the depth at Elk Hills?

A. Yes, as I stated before—

Q. What was that conclusion that you arrived at previously?

A. I stated about a dozen times that I thought it was between three and four thousand feet.

Q. If the Honolulu well merely confirms your previous conclusion, will you tell me on what you based your previous conclusion that it was between three and four thousand feet deep?

A. Because I have stated several times that the formations over the Elk Hills—existing in the Elk Hills—are thicker and that less erosion has taken place, which is visible from an examination in the field.

Q. How much thicker did you determine that formation was than the McKittrick formation at McKittrick?

A. Over two thousand feet.

Q. Then you did determine how thick the formation was at McKittrick?

A. I stated several times that the formation at McKittrick was from four hundred to eleven hundred feet, as I had been told.

Q. Then you would not agree with Mr. Arnold's statement on page 210 of bulletin 406: "Assuming the thickness of the McKittrick formation to be about the same in the hills as it is in the Midway and McKittrick district, that is, between fifteen [452] hundred and two thousand feet, it seems probable that at the axis of the Elk Hill anti-cline the oil-bearing sand is from nine hundred to fourteen hundred feet below the surface. Is that correct?

Mr. Mills—Objected to because it has already been answered.

Mr. Lewers—Not with reference to the thickness at McKittrick. The question is directed specifically to whether you agree with Mr. Arnold's assumption that the McKittrick formation at McKittrick is between fifteen hundred and two thousand feet.

A. No; I don't agree with that for the simple reason, as I stated before, that I do not believe Mr. Arnold wanted to state that. In this connection, that may be a typographical error, as are several others in this book, and I would just as well point out another typographical error in this book which is on page 79, the fourth line from the bottom, which reads: "So far as dikes of this character in Section 27, Township 30 South, Range 23 East,—" He evidently means Range 22 East. I am not responsible for the printing of that bulletin.

Q. Now, you started out to check Mr. Arnold's conclusion. Didn't you put in your note-book any comment on the fact that his assumption of from fifteen hundred to two thousand feet of thickness at McKittrick was a typographical error?

A. I don't know that I did.

Q. Have you that note-book with you?

A. No; I have not.

Q. Have you any of your note-books with you?

A. Yes.

Q. Didn't you regard it as important to have your note-books here during your testimony?

A. I have them all here except the one referring

to December, 1910, and I thought I had that one with me, but it is not here. [**453**]

Q. Didn't you at any time subsequent to December, 1910, endeavor to ascertain the thickness of the overlying formation at McKittrick, for the purpose of checking Mr. Arnold's work?

A. I believe the statement which Mr. Arnold made there is a general statement, if you read it.

Mr. Lewers—I move that that be stricken out as not responsive.

Q. I wish you would pay attention to the question. (The question is read by the reporter.)

A. I don't recollect that I did, as far as McKittrick is concerned. I beg your pardon. Did you mean McKittrick or the McKittrick formation?

Q. The McKittrick formation at McKittrick.

A. I did not, as far as the McKittrick formation at McKittrick is concerned, as near as I can recollect.

Q. Didn't that great diversion between your and Mr. Arnold's conclusions strike you as of some importance?

Mr. Mills—I object to that because it has been gone over at least four or five times, as the record will show.

A. I don't know that I did. It may and it may not.

Q. By Mr. Lewers—You realized, did you not, at that time, the necessity of as close an approach to scientific accuracy as was possible?

A. I didn't know anything about this particular suit in December, 1910. I went over into the Elk

Hills to examine Section 24, 30—23, for one particular purpose, and we did so.

Q. If you went purely for the purpose of examining that with reference to fuller's-earth deposits, why was it on your way over that you checked Mr. Arnold's map as to the dip of the McKittrick formation?

A. Because the day previous we spent at McKittrick, or some time prior to our trip to Elk Hills we spent in McKittrick, [454] and, as I said before, it is my custom and the custom of any man, I think, to check on any map which he may have with him to find out whether it is correct or not.

Q. Later on you became acquainted with the fact that this present suit was contemplated, didn't you?

A. Yes sir.

Q. And you later on learned that this suit had been brought, did you not?

A. Yes sir.

Q. After you had learned that, after you went into the country to make a more careful investigation, did you not think it necessary to determine accurately as far as possible the thickness of that formation at McKittrick?

A. At that time I knew I had seen the logs of so many wells,—the logs of the Associated Oil Company and the Elk Hills included, that I paid no more attention to the work around McKittrick except to go over it again in a general way and extend my examination farther to the southeast.

Q. What were you doing in there at that time, Mr. Martin, after you had examined for fuller's-earth?

A. At what time?

Q. In your subsequent visit to the Elk Hills, what were you doing?

A. To learn the progress the Associated Oil Company was making in their wells; to complete more closely the dips—to work out more closely the structure of the Elk Hills and similar work—in order to determine how far the 5000-foot limit would go to the north, for instance, in one particular instance. I have to determine before any mineral application goes to patent whether any land is mineral or not. For instance, if an agricultural entry is made in the withdrawn area.

Q. Then one of your purposes was to determine how far [455] north the 5000-foot depth limit went, was it?

A. Yes sir.

Q. In determining that didn't it occur to you that it was important to determine the thickness of the formation at McKittrick?

A. I knew the thickness of the McKittrick formation since I had seen and studied the location of the Associated Oil Company in the Elk Hills.

Q. And how thick was it?

A. These logs have been given to me confidentially. I don't know whether I am at liberty.

Q. I want you to tell me what the determination was. Don't worry about the logs.

Mr. Mills—Are you speaking for the Associated Oil Company?

Mr. Lewers—No.

Mr. Mills—You were the other day.

A. I don't feel at liberty to give out any information that was given to me confidentially, unless I am released.

Q. By Mr. Lewers—The question was not what any log showed. What I want to know is how deep do you determine the McKittrick formation to be in the Elk Hills?

A. Since I determine that formation from the log, it amounts to the same thing.

Q. Will you kindly answer the question?

A. What is the question? (The question is read). I don't feel at liberty to answer the question.

Q. Do you refuse to answer it?

A. I would like a ruling upon it.

Q. There is no ruling to be made, unless you make it.

A. By Mr. Mills—Did you receive these reports confidentially from the Associated Oil people? [456]

A. I have.

Q. And was it understood at the time they were given to you?

A. Any information given to me by Mr. Williams, chief geologist of the Associated Oil Company, has been treated confidentially by me since I have had it.

Q. Mr. Mills—Let the record show that Mr. Williams, chief geologist of the Associated Oil Company, is in the room, the person from whom he received

the information, and if he releases him he can answer the question.

Mr. Lewers—Let the record show that I want to know the determination he reached. I don't care how he reached it.

Mr. Mills—The witness says he arrived at his determination from the logs.

Mr. Lewers—As a matter of fact, you have already put it into the record as to the depth of that well.

Mr. Mills—Not with this witness.

Mr. Lewers—No; from another witness.

Mr. Mills—We got it from one of the Associated Oil people.

Q. By Mr. Lewers—Answer the question.

A. My answer is the same; that I refuse to answer the question unless released by the Associated Oil Company, as the information was given to me as confidential and will be treated by me as such until released.

Q. Did you base the location of that red line on Exhibit O which you have introduced and prepared upon your determination as to the depth of the McKittrick formation in the Elk Hills—this brown line?

A. No; the brown line denotes what is commonly termed the Elk Hills territory.

Q. Then you don't intend that as any representation of the [457] limits of the oil territory?

A. No sir.

Q. Where do you put the limits—the 5000-foot limit on the north side of the Elk Hills—with ref-

erence to the point where it was placed by Mr. Arnold?

A. As near as I can recollect I pulled it in.

Q. How much?

A. I don't recollect now the exact distance, but I should say a half a mile, as near as I can recollect.

Q. Why did you do that?

A. I took the dips of the strata in the Elk Hills into consideration, and the depth at which oil had been found in the Elk Hills.

Q. That is, you took into consideration one factor which you now refuse to state, did you?

A. Yes; the depth of the oil sand.

Q. And did you make any report as to the outside limits of possible oil development based on your examination of the Elk Hills?

A. I made a report pertaining to one particular entry.

Q. You made that report to the government, did you?

A. Yes.

Q. And you used as a basis of the report this confidential information you had obtained from the Associated Oil Company?

A. I did.

Q. And yet you refuse to give me the conclusion which you reached as the depth of that formation in the Elk Hills?

A. Because my reports to the government are confidential and are treated as such, and plainly marked as such.

Q. And the important factor in determining this outside limit was the depth given as confidential, was it?

A. Yes; and the dips exposed on the north slope of the [458] Elk Hills.

Q. Did you determine that in 1904?

A. Not the exact depth at which the oil sands were found.

Q. Now, Mr. Martin, as an oil expert will you tell me what matters you regard as important in determining whether any particular territory you are examining is valuable for oil. I mean valuable for oil commercially.

A. The structure of the territory, I think, is most important, and its vicinity to a proven field.

Q. Let us take the structure first. What is the important thing about the structure?

A. Well, being a fluid, oil naturally follows the law of gravitation the same as water, and oil and water existing in a strata, and oil being lighter than water, oil will naturally flow to the highest place it can migrate into. That is, the water would displace the oil in the syncline and force it to migrate to the anticline—the axis of the anticline and its flanks.

Q. Wouldn't it be at all important to ascertain whether there is any oil formation that produces the oil to go into that anticline?

A. Yes; I said that in my former answer.

Q. Wouldn't that be your first consideration?

A. I said that oil or evidences of oil must be somewhere.

Q. Would mere evidences of oil be sufficient to permit you to go into the secondary stage of your examination concerning the existence of the anticline?

A. As I stated before, if oil exists at all the top of the anticline or its flanks on either side are the most favorable places for petroleum to accumulate.

Q. Let us devote our attention to the first requisite. Suppose you had found a gas blow-out such as you found in [459] Section 32 in the next township. Would that be enough?

A. It would indicate to me that petroleum was in that vicinity.

Q. Now, if you were passing on a question for a man who desired to prospect the territory for the purpose of developing oil to sell in the market, and you found a gas blow-out of that kind, would you stop there and tell him that was enough evidence to sink a well on to get a well for the market?

A. If the structure was favorable I would say yes.

Q. What do you mean by a favorable structure?

A. I have stated it time and again. I mean thereby an anticlinal structure.

Q. Might it not be possible to have the most perfect anticline in the world and yet not have enough oil to be extracted at a profit?

A. I can imagine of such conditions, yes; but they are in the great minority. You may take nearly all the oil fields of the world and they have first been developed along the anticline.

Q. Do you know that from experience?

A. No, but that is a matter of fact to any one who has read anything about it.

Q. You are basing that on your conclusions that you have arrived at by—

A. The statements made by writers who knew what they were writing about.

Q. Well, assume that such available oil deposits have been found in anticlines. Can you reason back as to the commercially scientific proposition that after you have an anticline you are going to have the oil?

A. If the anticline is in the vicinity of an oil field, and an oil seepage occurs on or near the crest of said anticline, I should certainly say that the land was oil in character. [**460**]

Q. Would the age of the underlying formation have any influence on your opinion?

A. No; the seepage itself would be evidence enough that the oil must be there.

Q. In what sort of formation does oil occur? That is, from what sort of formation is it developed?

A. The oil is developed from diatomaceous shales or in diatomaceous shales, and migrates from there into the overlying porous strata.

Q. Wouldn't it be important to you to determine whether there was any shale which you have referred to from which the oil is developed?

A. Such shales do exist to the west of the Elk Hills in the Temblor region.

Q. Do you know whether it existed under the Elk Hills?

A. I know now.

Q. As a result of this confidential information?

A. From an examination of the field as a whole I concluded that it extended under the Elk Hills.

Q. Would the existence of the wells which you observed when you went in there in 1910, without that would you have known whether there was any oil producing shale beneath the McKittrick formation in the Elk Hills?

A. There were no wells in the Elk Hills in 1910.

Q. I know it. I am very well aware of it.

A. Then I don't understand your question.

Q. Isn't it a fact that if you went on the ground in 1904 you would have had no possible way of knowing whether there was any oil shale under the Elk Hills?

A. The seepage certainly indicates that the oil must have come in from somewhere, and since the oil is created in the shale it must have come in from the shale underlying the Elk Hills. [**461**]

Q. That would be all the evidence you have?

A. And the shale outcroppings further to the west.

Q. Where?

A. In the Temblor Range as indicated on my last exhibit.

Q. How many miles?

A. Oh, six miles.

Q. Is there a shale outcropping six miles from any portion of Township 30-23?

A. Yes; in Section 31, Township 30-22.

Q. How is it there revealed?

A. I remember having seen a shale outcrop there near a gypsum mine. A shale dipping to the east.

Q. How much shale was there exposed? What thickness?

A. In that particular place it was a small spur, perhaps 20 or 25 feet.

Q. To what period did that shale belong?

A. The Monterey formation.

Q. How do you know?

A. It was older—it underlies the McKittrick formation.

Q. Is that your sole reason for saying it belonged to the Monterey formation?

A. Well, it has been termed the Monterey formation and is an older formation than the overlying McKittrick formation.

Q. Couldn't it be still older than the Monterey formation?

A. No, because I think it is the Monterey formation.

Q. Did you make an examination of it to determine whether it was the Monterey formation or whether it was not a still older shale?

A. No; I didn't make an examination except that that formation there is underlying the McKittrick formation.

Q. If there were any of what Mr. Arnold called Vaqueros formation it would be underlying the McKittrick? [462]

A. Yes, but the Vaqueros looks entirely different; it is easy to distinguish the two.

Q. How do you distinguish between the two?

A. Monterey is a shale and Vaqueros is a sandstone.

Q. That is your sole manner of distinguishing between the two?

A. And their relation structurally—their location structurally.

Q. You have already given that. I will ask you another question. Does shale occur in any age except the Monterey?

A. Yes; you find shale more or less in all the formations. The logs will show that.

Q. Is it not also a fact that so far as the appearance is concerned that it is a matter frequently of great difficulty to determine whether a particular shale formation belongs to one period or to another?

A. If you would just take that shale formation locked up in a room twelve by twelve, you might find it difficult; but in a field you have a whole territory to look at.

Q. Then it is very easy in the field, is it?

A. Comparatively so, yes sir.

Q. What method is employed by geologists who are familiar with their business, in determining the age of any particular kind of shale?

A. Collect fossils if they can find any.

Q. Did you endeavor to collect any fossils from this shale exposure?

A. I did not. I told you why. My line of work

is entirely different from that of the paleontologists of the United States Geological Survey.

Q. They endeavor to find fossils, do they not, for the purpose of fixing that shale in its proper period? [463]

A. They do.

Q. And that is the recognized test, is it not?

A. It is, yes. But they don't collect fossils from every exposure. After a formation has been recognized in the field, they don't go by fossils alone, but also from its appearance. Any man with experience can tell after he has worked in the field some time without looking at the fossils if they should exist, at every exposure as to which period they belong.

Q. Can you so determine?

A. A good many cases, yes.

Q. Can you in each case?

A. I should answer no to that.

Q. Could you in this particular case determine to what period this shale that you found exposed belonged?

A. From its position structurally, yes.

Q. Just from its position?

A. Structurally; yes.

Q. It might have belonged to an entirely earlier period, might it not?

A. Well, it doesn't.

Q. It might have, might it not?

Mr. Mills—He has answered already that it does not. He has asserted a fact, and now you ask him if it might not.

A. You must frame your question in such a way that it is possible to answer. It might not, after I stated that it did not.

Q. By Mr. Lewers—As a matter of fact, Mr. Martin, do you know what period that shale did belong to?

A. Yes, from its appearance and structural position I believe it belongs to the Monterey formation.

Q. And it might have been Eocene shale, might it not?

A. No. [**464**]

Q. Why not?

A. Because it is overlaid by the McKittrick formation, and the Eocene is below the Monterey.

Q. If it had been Eocene shale wouldn't it have been overlaid by the McKittrick formation?

A. If the Monterey and other formations had been eroded, yes.

Q. That is just what I am coming to. Do you know that they had not been eroded?

A. As near as I can recollect, no.

Q. But do you know?

Mr. Mills—He has answered the question. He has stated as near as he recollects.

A. No; I don't think they were eroded.

Q. By Mr. Lewers—Then, if it was easy to determine that, why do practical and competent geologists resort to the fossils tests?

A. They have to start in with something in coming into a new field.

Q. Let us assume now that this Monterey shale

—that it is Monterey shale. Does Monterey shale produce oil?

A. If it is overlaid by a porous formation into which the oil can migrate, yes sir.

Q. How do you know that?

A. That has been proven in the field.

Q. By you?

A. No; by numerous oil operators.

Q. Who told you that?

A. Mr. Williams.

Q. Mr. Williams told you that Monterey shale produces oil, did he? Did he, Mr. Martin?

A. That diatomaceous shale contained in the Monterey [**465**] formation produces oil. Mr. Arnold makes that statement, and various writers on the California oil fields.

Q. Is there any Monterey shale that is not diatomaceous?

A. Yes sir; there may be certain strata or certain parts of the Monterey shale which are not diatomaceous.

Q. Would that produce oil?

A. No.

Q. Then the mere discovery of Monterey shale would not be a determination that it was oil producing shale?

A. Certain parts of the Monterey shale are diatomaceous.

Q. You would always have to ascertain whether the particular formation of the shale was diatomaceous, wouldn't you?

A. Yes sir.

Q. Did you so ascertain?

A. In each instance.

Q. Where you found the shale exposed?

A. No, we did not.

Q. Let us assume that it was diatomaceous Monterey shale, oil producing. Does any other shale produce oil?

A. Any other—

Q. Any other kind of shale?

A. As far as I know in the California fields, the diatomaceous shales are the origin of the oil.

Q. What is the oil?

A. Petroleum.

Q. What is petroleum?

A. A hydrocarbon.

Q. What kind of a hydrocarbon?

A. Of no fixed chemical composition.

Q. From what does it come originally?

A. From organisms such as diatoms.

Q. Then it is animal in its origin entirely? [**466**]

A. That is a mooted question. In my opinion it is.

Q. Well, then, let us take all the favorable assumptions to that shale that we can,—that it is Monterey diatomaceous oil producing shale, and that your gas blow-out over in Section 32 in the next township came from the same shale. Now, as a commercial proposition, could you yet tell your client that he had a sure thing to develop oil in paying quantities? What would be your next factor?

A. No; I would not be able to state that it would be found in paying quantities. I would be able to state that it would be found there; that oil would exist below the Elk Hills.

Q. But he wants to know whether it would be in paying quantities. What is the next thing you would try to find out for him.

A. Whether it is found in paying quantities?

Q. He wants to know whether it would be.

A. I would advise him to bore.

Q. That is the only way he would be able to find out?

A. That would be the only way to find out whether it was in paying quantities or not.

Q. Now, your conclusions with reference to the Elk Hills would not stop this deposit of oil which you have referred to as being under the Elk Hills at that arbitrary line north of the Elk Hills, would it?

A. You mean that it extended further?

Q. Yes.

A. I think the line may be termed more or less arbitrary at the time it was made.

Q. That is, you think oil would extend further?

A. No, I don't think so.

Q. You think oil quits out there north of the Elk Hills?

A. No; I believe it extends, but at too great a depth to [467] be economically reached.

Q. We will come to that. How far do you think it extends?

A. Approximately as indicated by the blue line.

Q. Perhaps you don't understand the question. How far do you think it extends, disregarding the matter of depth?

A. I can't tell accurately, except my opinion is that it would extend so far until it is replaced by the water which, in my opinion, undoubtedly occupies the synclinal axis of the San Joaquin plain.

CROSS EXAMINATION OF F. OSKAR MARTIN.

Continued as follows, page 1260, Vol. 3:

I believe the oil territory extends practically as far north as the blue line shown on Government's Exhibit "F." Beyond that distance its depth is below 5,000 feet, which would make it not economically available. I have not determined how much farther beyond that line it extends. The geological evidence is that it does extend further.

I still maintain that it is very probable that the syncline is filled with water now. Also, at one time, it may have been filled with oil. It is my belief that the surface of that water is some distance north of the blue line mentioned above because, as I remember, the axis of the syncline of the San Joaquin Valley is a good deal more than one-half further distant from the axis of the Elk Hills anticline than the 5,000 foot limit as indicated on the map.

I believe that those parts of the stratum nearer to the axis of the anticline contain oil, and those parts of the stratum nearer to the axis of the syncline con-

tain water. Consequently, since the distance from the 5000-foot limit as shown on Government's [468] Exhibit "F" is much smaller than the distance from the 5000-foot limit toward the synclinal axis, it is reasonable to suppose that that part from the Elk Hills' anticlinal axis toward the 5000-foot limit is filled with oil, while that part near the synclinal axis is filled with water.

Oil would always be at the highest place. Its position would depend on the relative amount of water and oil. The anticlinal axis would be occupied by oil.

Water passes more freely through the permeable bed of sand because it has not the viscosity which oil has. Oil would be more easily side-tracked.

If the supply of oil in the stratum underlying the San Joaquin Valley was not large and the water supply was considerable, it would not be possible for the anticline to be filled with water and not have any appreciable quantity of oil in it. The anticline would be filled with oil because there is where the oil would run to, and that would be the fact even if the source of oil was not immediately underneath the Elk Hills and the supply of oil were limited.

I consider the Elk Hills the most favorable place for the accumulation of oil since it is the highest, and oil and water naturally follow natural laws—the water seeks the lowest level while the oil is above the water. I maintain that the oil extends for a considerable distance north of the Elk Hills since the structure of the hills shows it to be of a more or less dome-like shape and the dips are slight, and, consequently,

the whole area as far as the plain to the north of the Elk Hills must be considered a part of the Elk Hills anticline or dome.

I know from the examination of the logs of the wells drilled by the Associated Oil Company that the Elk Hills contain porous strata. As shown by the logs, it extends from 30 to 24 and 26, over the whole territory between it; because the sequence of [469] formations in the logs are similar. I have examined five logs, one of which was the log of the Hillcrest well. There was no oil in that well because they hadn't gone deep enough.

The log of the Scottish well, which I examined, did not show any oil, but that, in my opinion, is no reason why no oil should have been found there, because it was drilled from two thousand to four thousand feet with a rotary drill, which tends to mask the formation. This has been proved by operations in the field.

The logs on Section 26, 30-23 and Section 30, 30-24, as near as I remember, and the log on Section 24, 30-23, showed gas. All of the logs showed sands.

There may be some sands which are dry and contain no oil, but they would not lie in exactly the same formation and in the same stratum as the sands containing oil. If you penetrate an oil sand in one place and find oil, you will find oil when you penetrate it in another place if it is the same oil sand, even if you penetrate it a half mile or a mile or five miles away from the point where it was first penetrated. That is my experience extending over a few months in the oil field.

I do not know what Mr. Youle meant by "tight formation." I know of some formations that are impervious to the passage of oil. A place saturated with water would be impervious to the passage of oil. I say this because I can conceive of instances where, through a great fracturing, such places may become friable. An intrusion of some foreign matter into the strata would prevent the migration of oil. A fault would prevent its migration up to a certain point—up to the faulting plane. That is not uncommon in the California oil fields and not uncommon in other oil fields that I have read of. I based the conclusion that it is not uncommon in the California oil fields upon the development and upon the map I have placed in evidence; the exhibit marked "O," which shows that [**470**] the wells have been developed fairly continuously along certain lines. I also based this conclusion upon examinations made through the state.

I know the country in the vicinity of the Elk Hills has been subject to a considerable lateral pressure and folding and elevation and subsidence at different geological periods, but not through any faulting. There is no evidence of any faulting in the lands involved in this suit except some small faults of a few feet displacement which would not, I think, be sufficient to block the passage of oil through sand formations.

No other agencies occur to me now, which would block the passage of oil through the sand formation.

The existence of oil sands can be determined with-

out drilling wells; if they did not exist there would be no seepages. From the seepage found in Section 32, T. 30-24 I came to the conclusion that oil sands underlie the Elk Hills, and on account of the structural condition of the Elk Hills, they extend over all of the Elk Hills to the west of the seepage. I do not think that seepage came from a deposit of oil entirely local in that vicinity. I think this on account of the structural conditions in the Elk Hills, their anticlinal structure, their low and gentle dips, showing no fracturing. If that seep had come from what you term a local deposit, then more fracturing would be shown in the Elk Hills because experience has taught us that local deposits are found where the formation has been greatly fractured. I refer now to the Cariso Plain where oil seeps are found and wells have been drilled right near them and no oil has been found. But that is explained in my mind because the country there has been greatly fractured, and such fracturing does not exist in the Elk Hills.

The slight fracturing is the cause for the oil seep in Section 32. It is a very slight one. The uniform dip indicated that there is no fracturing in other parts of the Elk Hills. The [**471**] surface in Section 32 indicates a fracture or wrinkling to a somewhat greater extent than elsewhere along the anticline through the entire Elk Hills. The anticline at that particular place takes a turn to the northwest and from that I conclude that there is a crack or fracture in it at that point. There are no sharp turns in the course of the anticlinal axis at other places. The course of the anticlinal axis is more or less sinuous.

The fact that no oil seeps are found at other places where the axis of the anticline makes a turn is not any indication that there is no oil underneath. Oil would not come up in other places where there is a bend in the axis of the anticline because the fracture in such places is not so great as in Section 32.

I could not determine how great the fracture was in Section 32 on the surface. The existence of the oil seep is an indication that the fracture does exist, but as to the thickness or greatness of the fracture, I cannot answer.

I am not speculating as to the existence of a fracture in 32; if the fracture were not there, the seepage would not be there. I would not necessarily expect to find a seepage at places where the fracture existed elsewhere; some conditions might exist whereby the oil or gas might have been prevented from ascending to the surface even in a fracture, and in this I am not referring to the absence of oil. The system of faulting might prevent the gas or oil from coming to the surface. I did not see evidences of such faulting in the Elk Hills.

The oil-producing formations referred to belong to the older or the lower part of the McKittrick formation and I believe that a very considerable period of time elapsed between the laying down of the formation which produced the oil and the deposit of the formation on top. That time might be measured by hundreds of thousands of years, and on the other hand, it took [**472**] hundreds of thousands of years to produce the oil, too.

The McKittrick formation is not conformable to the formation producing the oil which has been called the Monterey Formation. There is evidence there that that is a territory which, in earlier times, suffered a great deal of shifting and folding and it is possible that prior to the time of the McKittrick Formation the surface of the old formation called the Monterey formation may have revealed a very irregular formation under the Elk Hills.

It is possible that the stratum may have been upturned so that its edges were revealed. It is not possible that this earlier formation may lay horizontal with the surface because if the overlying and underlying formations have been crushed together in a fold, then the underlying formation would not be horizontal. It is generally accepted that the Monterey or Vaqueros formation created the oil or is the source of the oil. There may be a portion of that formation which is not oil-producing.

Very little oil could be obtained from the producing shale. It would be gotten in the porous formation overlying the shale. You must have a reservoir for the oil to migrate into, which must have some connection with the shale which produced the oil. The existence of a large body, more or less, of loose sand under the Elk Hills would be sufficient to warrant my advising a prospector that he could get oil in commercial quantities taking in connection the vicinity of the territory to an oil-producing and creating shale. It is not necessary that any oil creating shale immediately underlies the porous sands which will